United States Court of Appeals

for the Second Circuit

APPENDIX

75-5024

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-5024

B

HARVEY R. MILLER, as Trustee in Bankruptcy of IRA HAUPT & Co., a Limited Partnership, Bankrupt,
Plaintiff-Appellant,

—against—

NEW YORK PRODUCE EXCHANGE *et al.*,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume II
(Pages 685a – 1372a)

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WEIL, GOTSHAL & MANGES
Attorneys for the Plaintiff-Appellant
767 Fifth Avenue
New York, N. Y. 10022

BROWN, WOOD, IVEY, MITCHELL & PETTY
Attorneys for Defendants-Appellees
Merrill Lynch, Pierce, Fenner & Smith, Inc. et al.
One Liberty Plaza
New York, N. Y. 10006

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD
Attorneys for Defendants-Appellees
Bunge Corp. et al.
140 Broadway
New York, N. Y. 10005

OLWINE, CONNELLY, CHASE, O'DONNELL & WEYHER
Attorneys for Defendants-Appellees
New York Produce Exchange et al.
299 Park Avenue
New York, N. Y. 10017

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Defendants-Appellees
Continental Grain Co. et al.
345 Park Avenue
New York, N. Y. 10022

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Volume I

	PAGE
Relevant Docket Entries	1a
Amended Complaint	9a
Answer of Harry B. Anderson (deemed amended pursuant to stipulation)	30a
Answer and Counterclaim of Bunge Corp. and Walter C. Klein (deemed amended pursuant to stipulation)	46a
Answer of Continental Grain Co. and Harold H. Vogel (deemed amended pursuant to stipulation)	51a
Amended Answer of Sidney Fashena	55a
Amended Answer of Donald V. MacDonald	72a
Answer and Counterclaim of Merrill Lynch, Pierce, Fenner & Smith, Inc. (deemed amended pursuant to stipulation)	88a
Amended Answer and Counterclaim of New York Produce Exchange and Carl R. Berg	105a
Amended Answer of I. Usiskin & Co.	145a

PAGE

Amended Counterclaim of Merrill Lynch, Pierce, Fenner & Smith, Inc. 159a

Reply to Counterclaim of Bunge Corp. and Walter C. Klein 163a

Reply to Amended Counterclaim of Merrill Lynch, Pierce, Fenner & Smith, Inc. 166a

Reply to Counterclaim of New York Produce Exchange and Carl R. Berg 169a

Stipulation and Order Withdrawing With Prejudice Counterclaim of New York Produce Exchange 175.1a

Stipulation and Order Withdrawing With Prejudice Counterclaim of New York Produce Exchange, Fahnestock & Co., Merrill Lynch, Pierce, Fenner & Smith Inc., Bunge Corp. and Walter C. Klein 175.6a

Pre-Trial Order (Schedule A) 176a

Defendants' Request to Charge (Request #63) 192a

PAGE

Trial Transcript*

Witnesses	*Excerpted From Trial Transcript Pages:*	
Leuthold	[182- 355]	194a
Ellison	[355- 486]	243a
Dahl	[514- 865]	261a
Preston	[865-1069]	401a
Fontana	[1070-1148]	436a
Boyer	[1150-1337]	458a
Weinstein	[1367-1411]	474a
MacDonald	[1353-1987]	486a

Volume II

Berg	[1988-2399]	685a
McMinn	[2404-2493]	853a
Fashena	[2495-2588, 2623-2677]	895a

* Colloquy and arguments have not been separately indexed.

PAGE

Trial Transcript*

Witnesses	*Excerpted From Trial Transcript Pages:*	
Rehders	[2677-2728, 2740-2747]	997a
DeAngelis	[2748-3064]	1025a
Gittleman	[3070-3170]	1132a
Anderson	[3171-3343]	1170a
Hankin	[3344-3360]	1275a
Fornari	[3360-3506]	1282a
Forti	[3509-3634]	1336a

Volume III

Klein	[3634-3754]	1371a
Groeneveld	[3758-3766]	1427a
Ferretti	[3768-3903]	1433a
Vogel	[3913-3982]	1479a
Ferretti	[3982-4103]	1521a
Stafford	[4104-4142]	1582a

* Colloquy and arguments have not been separately indexed.

PAGE

Trial Transcript*

Witnesses	*Excerpted From Trial Transcript Pages:*	
Totah	[4152-4194]	1594a
Worthington	[4194-4205]	1608a
Fribourg	[4205-4219]	1610a
Kenner	[4219-4242]	1620a
Ellison	[4270-4322]	1626a
Gray	[4322-4955]	1633a
Ellison	[5152-5219]	1796a
Arthur	[5236-5366]	1816a

Volume IV

Barton	[5368-5545]	1835a
Raclin	[5597-5670]	1920a
Farris	[5744-5938]	1982a
Gray	[5939-6008]	2033a

* Colloquy and arguments have not been separately indexed.

PAGE

Special Verdict 2133a

Final Judgment 2140a

Notice of Appeal 2143a

Documents filed subsequent to the Notice of Appeal pursuant to stipulation 2145a

Exhibit 52 marked at a deposition of John Ferretti appearing on behalf of Continental Grain Company 2145a

Documents filed in *Seligson* v. *Bunge Corp. and Walter C. Klein,* subsequently filed in this action with respect to the Harbor Tank issue:

Complaint 2146a

Opinion of Whipple, J., remanding the action to the Superior Court of New Jersey 2170a

Brief of Plaintiff in *Seligson* v. *Bunge Corp. and Walter C. Klein* 2174a

Stipulation between the Parties 2231a

Stipulation of Dismissal 2235a

Release 2236a

Memorandum in Support of Motion by Defendants Bunge Corp. and Walter C. Klein with respect to Certain Evidence 2239a

Appendix to the Memorandum in Support of Motion by Defendants Bunge Corp. and Walter C. Klein with respect to Certain Evidence 2264a

PAGE

Plaintiff's Memorandum in Opposition to the Motion by Defendants Bunge Corp. and Walter C. Klein with respect to Certain Evidence 2290a

Plaintiff's Memorandum in Opposition to the Defendants' Motion for a Directed Verdict 2337a

Excerpts of depositions of Richard Forti 2435a

Exhibits — Volume I

Plaintiff's Exhibits

Pl. Ex. 1 ..... 1e

Pl. Ex. 9 ..... 3e

Pl. Ex. 9a 3e

Pl. Ex. 9b 9e

Pl. Ex. 9c 13e

Pl. Ex. 9d 17e

Pl. Ex. 9e 21e

Pl. Ex. 10c 35e

Pl. Ex. 10g 39e

Pl. Ex. 12h id. 43e

Pl. Ex. 12m id. 51e

Pl. Ex. 13a id. 61e

Pl. Ex. 13b 65e

Pl. Ex. 15a 67e

Pl. Ex. 16f 69e

Plaintiff's Exhibits (cont.)

	PAGE
Pl. Ex. 17	73e
Pl. Ex. 18a-bb	75e
Pl. Ex. 25 id.	149e
Pl. Ex. 26 id.	151e
Pl. Ex. 27	153e
Pl. Ex. 28	155e
Pl. Ex. 30	157e
Pl. Ex. 41	159e
Pl. Ex. 45a-bb id.	171e
Pl. Ex. 45e	185e
Pl. Ex. 45o id.	215e
Pl. Ex. 45q id.	221e
Pl. Ex. 55	259e
Pl. Ex. 56	303e
Pl. Ex. 59 id.	391e
Pl. Ex. 62	423e

Exhibits — Volume II

Pl. Ex. 73	447e
Pl. Ex. 74	449e
Pl. Ex. 76	451e
Pl. Ex. 79	453e
Pl. Ex. 80	455e

Plaintiff's Exhibits (cont.)

	PAGE
Pl. Ex. 81	457e
Pl. Ex. 82	459e
Pl. Ex. 83	461e
Pl. Ex. 84 id.	463e
Pl. Ex. 87 id.	467e
Pl. Ex. 88 id.	471e
Pl. Ex. 89 id.	473e
Pl. Ex. 92 a-d	475e
Pl. Ex. 93	489e
Pl. Ex. 95	491e
Pl. Ex. 98	495e
Pl. Ex. 103 id.	501e
Pl. Ex. 113 id.	503e
Pl. Ex. 122	507e
Pl. Ex. 122a id.	509e
Pl. Ex. 123	511e
Pl. Ex. 123a id.	513e
Pl. Ex. 124	515e
Pl. Ex. 124a id.	517e
Pl. Ex. 125	519e
Pl. Ex. 125a id.	521e
Pl. Ex. 126	523e

Plaintiff's Exhibits (cont.)

	PAGE
Pl. Ex. 126d id.	525e
Pl. Ex. 127	527e
Pl. Ex. 130 id.	529e
Pl. Ex. 131 id.	531e
Pl. Ex. 131a id.	533e
Pl. Ex. 133	535e
Pl. Ex. 133a id.	537e
Pl. Ex. 134 id.	539e
Pl. Ex. 140	541e
Pl. Ex. 141	543e
Pl. Ex. 142	545e
Pl. Ex. 1447 id.	547e
Pl. Ex. 148 id.	549e
Pl. Ex. 149 id.	551e
Pl. Ex. 150 id.	553e
Pl. Ex. 151 id.	559e
Pl. Ex. 152 id.	561e
Pl. Ex. 153 id.	563e
Pl. Ex. 154 id.	565e
Pl. Ex. 156	567e
Pl. Ex. 158	569e
Pl. Ex. 166	571e

Plaintiff's Exhibits (cont.)

	PAGE
Pl. Ex. 187	573e
Pl. Ex. 188	575e
Pl. Ex. 189	577e
Pl. Ex. 190	579e
Pl. Ex. 193	581e
Pl. Ex. 200	641e
Pl. Ex. 204	647e
Pl. Ex. 208	655e
Pl. Ex. 217	663e
Pl. Ex. 219c id.	665e
Pl. Ex. 219d-1 id.	669e
Pl. Ex. 230	671e
Pl. Ex. 234	673e
Pl. Ex. 235	675e
Pl. Ex. 238	677e
Pl. Ex. 249	687e
Pl. Ex. 251	715e
Pl. Ex. 252	717e
Pl. Ex. 253 id.	721e
Pl. Ex. 253a-c id.	723e
Pl. Ex. 255 id.	769e
Pl. Ex. 255a	771e

Plaintiff's Exhibits (cont.)

	PAGE
Pl. Ex. 255b	785e
Pl. Ex. 255c	807e
Pl. Ex. 255d	829e
Pl. Ex. 258	833e
Pl. Ex. 260 id.	837e
Pl. Ex. 260a-f	Following 840e
Pl. Ex. 261 id.	841e
Pl. Ex. 261a-l	Following 846e
Pl. Ex. 262	847e
Pl. Ex. 266	849e
Pl. Ex. 267	853e

Exhibits — Volume III

Defendants' Exhibits

Def. Ex. 1a	909e
Def. Ex. 3	983e
Def. Ex. 4a	1009e
Def. Ex. 5	1011e
Def. Ex. 7	1037e
Def. Ex. 13	1091e
Def. Ex. 15	1095e
Def. Ex. 19	1105e
Def. Ex. 35	1107e

Defendants' Exhibits (cont.)

PAGE

Def. Ex. 106 id. 1111e

Def. Ex. 107 id. 1113e

Def. Ex. 146 ..... 1119e

Def. Ex. 204a-u 1139e

Def. Ex. 208 ..... 1189e

Def. Ex. 209 ..... 1193e

Def. Ex. 211 id. 1197e

Def. Ex. 214 ..... 1275e

Def. Ex. 215 ..... 1279e

Court's Exhibits

Ct. Ex. 2 ..... 1291e

Ct. Ex. 4 ..... 1292e

Ct. Ex. 5 ..... 1299e

gwrf 7 "Berg" [1991]

"Q Are the minutes of the Board meetings prepared by you shortly following the Board meetings usually?

"A Usually.

"Q I believe that you stated that you also attended committee meetings of the Exchange?

"A Yes.

"Q Will you please identify the committee meetings which you regularly attended as secretary of the Exchange?

"A The Committee on Grain, the Committee on Cottonseed Products and Soybean Oil, the Arbitration Committee, the Animal Tallow and Grease Committee, the Vegetable Oil Committee. Those are the ones that meet most frequently. The Executive Committee, the Admissions Committee,

"Q How about the Complaint Committee, Mr. Berg, do you attend meetings of their committee if a meeting is held?

"A Yes."

MS. KAYE: Continuing right along:

"Q Can you describe for me the nature of the Complaint Committee?

"A The Complaint Committee hears complaints brought before it under the provisions of the bylaws.

gwrf 8 "Berg" [1992]

It endeavors in the event of a dispute to conciliate the dispute and get the disputants to agree upon a settlement. Failing that they make such report as they see fit to the Board.

"Q I think you said the Complaint Committee hears complaints which are brought under the provisions of the bylaws. What is the nature of the complaint?

"A Most of the complaints that we have had here that I am familiar with, and there have not been very many of them, have beenviolation of the trading rules relating to a violation of the trading rules. I recall one instance where a shipment of grain was made. It was not the quality that was sold and the seller refused to make a just settlement.

"That was a complaint arising out of failure to pay a just monetary claim, that sort of thing.

"Q To your knowledge, is the Complaint Committee the committee which would hear and investigate complaints about attempted corners or manipulations on the Exchange?

"A Possibly.

2B

gr1 "Berg [1993]

"Q Do you recall if at any time when you attended a meeting of the complaint committee such a complaint was made, that is a complaint about an attempted corner or manipulation on the exchange?

"A I don't recall any."

MS. KAYE: Page 12, line 13:

"Q The complaint committee, so I understand it, does that make investigations on its own initiative, or does it just hear complaints?

"A It hears complaints. I know of no instance where it functions on its own initiative, although it might.

"Q But you know of no instance per se?

"A No."

MS. MEIBURGER: Continuing right along there.

"Q How about the business conduct committee? Do you sit in on meetings of the business conduct committee?

"A Yes.

"Q Can you describe for me what the function of the business conduct committee is?

"A The committee is empowered to investigate circumstancys which might come to or be brought to its

gr2 "Berg [1994]

attention which might appear to be violative of our bylaws or rules."

BY MS. KAYE:

"Q Does the complaint committee sit regularly?

"A No.

"Q Or is it only convened at the request of the president or in some other fashion?

"A Normally a formal complaint if filed. A copy if furnished to the person against whom the complaint has been brought, and a notice of hearing is served, fixing a date and time for the hearing.

"Q How about the business conduct committee, Mr. Berg? Does that sit regularly?

"A No.

"Q That is álso convened --

"A When necessary."

MS. MEIBURGER: Page 14, line 8.

"Q Would a charge or an allegation of an attempted manipulátion or a corner on the exchange be one of the things which the business conduct committee was empowered to investigate?

"A Yes.

"Q During the time that you attended the meetings of the business conduct committee, do you

gr3 "Berg [1995]

recall if there was ever an instance where the business conduct committee did investigate or hear a charge of attempted manipulation or a corner on the produce exchange?

"A No."

MS. KAYE: I will continue with that.

"Q Do you recall if during the time that you attended the meetings ofthe business conduct committee, a charge of an attempted manipulation or a corner was ever presented to the business conduct committee?

"A No.

"Q Do you recall at the times you attended a meeting of the business conduct committee there was ever a discussion as to whether or not there was an attempted corner or manipulation on the exchange?

"A I don't recall that there was.

"Q Does the business conduct committee initiate investigations on its own, or is it also convened in response to a complaint?

"A No committee operates in a vacuum. There has to be some instance which would put any committee into operation to consider a matter.

"So some occurrence would actuate the business conduct committee, or any other committee.

gr4 "Berg [1996]

"Q By that, Mr. Berg, do I understand that it is not necessary that the committee actually receive a complaint, but that there be some condition or state of affairs which gives it reason to believe, then, that an investigation is necessary?

"A That's correct.

"The complaint committee normally would function, but not necessarily always, on the filing of a formal complaint by an individual member.

"The business conduct committee would likewise make an investigation based upon a formal complaint, but they might also take under consideration a matter which was brought to their attention quite informally. And so might any other committee relating to matters under their concern -- under its concern."

MS. KAYE: Page 18, line 25.

"Q I think you said it was the function of the quotation and supervisory committee to supervise trading on the exchange; is that correct?

"A Yes.

"Q From what aspect? What particularly is that committee concerned with?

"A The execution of orders by the brokers.

"Insuring that trades are not executed

gr5 "Berg [1997]

beyond the price fluctuation limit.

"Insuring that trading is conducted competitively by open outcry where every person in the trading area is in a position to accept an offer or sell a bid.

"To settle disputes that might arise between traders except on the times of the call, at which time settlement of disputes on the call are settled by the caller.

"Q Mr. Berg, would a charge or allegation of attempted manipulation or corner on the exchange be something with which the quotation and supervisory committee would be concerned?

"A If they knew that such was occurring, they would be concerned.

"They would undoubtedly report it to the chairman of the Cottonseed Products Committee, and to the president."

3A

elr1 "Berg 1998

MS. MEIBURGER: Page 21, line 17.

"Q Do you recall if, during your employ by the produce exchange you ever were asked, or that you did render assistance to any committee of the exchange in connection with an allegation or an investigation of an attempted manipulation or corner on the exchange?

"A I don't believe so."

MS. KAYE: Page 28, line 18:

"Q To make sure that I am clear, would it be the function of the floor personnel to call to the attention of the quotation and supervisory committee a particularly large trade or an unusual trade? Do they have any function or duty in that respect?

"A Only if such a trade appeared to be in violation of a rule or a regulation, in which event the head caller would call it to the attention of the chairman of the committee.

"But there is nothing unusual about a large trade.

"Q You say only if the trade appears to be in violation of a rule or regulation. What type of rule or regulation do you have reference to?

"A A trade made outside the price fluctuation limits.

elr2 "Berg [1999]

"Q Is that the only thing?

"A No. I would think that any trade that was an obvious violation would be called to the attention of the chairman if it was noticed by the caller or reporter.

"But as a matter of practical effect, the committee is on the floor trading at the ring, and would notice such a trade as quickly as the caller would, and it would be unnecessary for the caller to make any statement."

MS. MEIBURGER: Page 30, line 3:

"Q Mr. Berg, other than seeing that trades are executed within the price quotation limits or other trading rules of the exchange, is there any committee of the exchange whose duty it is to determine if there is a manipulation or an attempted manipulation or a corner on the exchange?

"A If something occurred -- and don't ask me what it might be because I am going to say I don't know -- that would cause someone to believe that such was taking place, it might well be a concern of any one or several or all of the members of the quotations committee, the trade committee, the business conduct committee, the complaint committee, a special committee, the executive

eir3 "Berg [2000]

committee, or the board acting directly."

MS. KAYE: Page 31, line 8:

"Q I think you said that if something occurred which would cause someone to believe that an attempted manipulation or corner might be taking place, it would be a concern of all the committees; is that correct?

"A Yes.

"Q And you said you would be unable to identify what that something would be?

"A Yes.

"Q Do I understand that to mean that you would be unable to identifywhat an attempted manipulation or corner was?

"A I might if I knew what the circumstances were. I have not seen any.

"Q You have not seen any? You have not seen any during your employ by the exchange?

"A That is correct.

"Q You have not seen any attempted manipulation or a corner?

"A Not that I recognized as such.

"Q Did you ever investigate to determine if one had occurred during your employ by the exchange?

elr4 "Berg 2001

"A I participated as secretary and subsequently either as executive secretary or managing director when, on a couple of occasions, the control committee was investigating to determine whether or not a corner was in the making or there was an attempted -- no, leave it at corner.

"That is as good as my memory serves me at the moment.

"Q You say you participated as secretary. Do you recall when that was, sir?

"A I believe we had an instance in 1947 or 1948 when a control committee was appointed and called for positions, and ascertained what interests had what positions.

"I think we did it again in 1950 or 1951, and possibly again in the middle -- in the middle fifties, and of course in 1963.

"Q That was when in 1963?

"A When the control committee called for positions on November 15th.

"Q In those instances where the control committee called for positions, do I understand it that its purpose there was to ascertain whether or not there was a corner?

elr5 "Berg [2002]

"I believe you said that you recalled an instance in 1947 or 1948 where the control committee called for positions to ascertain what the positions were?

"A Yes.

"Q Was it the committee's purpose there to ascertain whether or not there was a corner or manipulation?

"A As a subsidiary to an investigation which was mainly for the purpose of trying to assure that an orderly marketing process continued.

"As I recall it, and this is a long time ago so my memory may not be too good, the market was in an advancing price movement.

"The cotton oil crop that year -- cottonseed oil crop that year was of relatively poor quality.

"The control committee called for positions to see who was long, who was short, what the intentions were and to ascertain what could be done to alleviate a possible distortion.

"Now, in the process of examining these factors, the committee would naturally examine them in the light of is there a corner in the making or is this a natural economic happening.

elr9 "Berg [2006]

"A I think I have answered that one. I think I said in effect that where a market has wide and sharp price swings --

"Please strike what I said and I will start over.

"I think I have answered that, but an orderly market does not normally have wide and sharp price swings. On occasion it does, and there is an economic reason for it.

"Q You say on occasion it does and there is an economic reason for it.

"Do I understand that to mean that where there is an economic reason for a large price swing, that there will be an orderly market?

"A It usually is."

Page 54, line 9:

"Q Do you recall if in 1963 at any time during the year prior to November 14th there was a distortion in carrying charges in cottonseed oil futures on the produce exchange?

"Distortion with reference to the carrying charges?

"A I don't recall, I don't believe there was.

"Q Do you recall if there was discussion at

elr10 "Berg 2007

any meeting of any committee of the exchange which you attended during 1963 as to whether or not there was distortion with reference to carrying charges in 1963?

"A I don't recall any.

"Q At a meeting of the board of managers, was there discussion there?

"A I don't recall any."

MS. KAYE: Page 58, line 5:

"Q Earlier you had mentioned that the notes from which the minutes of the meetings of the board of managers are prepared are either stenographic transcripts or are recorded and then transcribed by, I think it was Mr. Hughes.

"A Yes.

"Q Are those stenographic transcripts or notes maintained by the exchange?

"A No. They are not transcriptions, really. They are notes.

"We don't even attempt to try to take a verbatim meeting -- it is impossible."

MS. MEIBURGER: Page 58, line 23:

"Q Mr. Berg, on the records that the floor personnel keep of transactions on the exchange, I think

elr11 "Berg [2008]

you said the price, the quantity, and some other factors, the time, the month, are those records then incorporated in any system of record keeping by the exchange, or are they transcribed in any way, or summarized?

"A Transcribed into a book, a ledger.

"Q And that ledger is in existence and maintained by the exchange?

"A Yes.

"Q Are they kept for any particular length of time, the ledgers?

"A Unless we have lost some in the process of a couple of moves that we have made, we probably have them back into the 1900's -- the early 1900's.

"Q Those books, Mr. Berg, do they also record ex-pit transactions?

"A Yes.

"Q When are they recorded, sir?

"A In the course of the day, if the needs of the various personnel work out, or after the closing.

"You mean in the book?

"Q Yes.

"A Right."

MS. KAYE: Page 61, line 5.

"Q I believe in discussing the situation in

3b pm elrf 1 "Berg" 2011

"Q And did the Produce Exchange do so in 1963?

"A Yes.

"Q During 1963 was there any action or steps which the Produce Exchange was required to take, or which it took in its effort to maintain orderly markets? Prior to November 14, 1963?

"A That questions requires a rather broad answer. Certainly our total structure as described in the bylaws and rules looks towards orderly marketing.

"We have rules which require certain trading practices and prohibit certain other trading practices, prevent certain trading practices and prohibit others -- and we have the means to enforce these rules by our disciplinary proceedings.

"We have by means of the committees involved, the means of handling the day to day trading problems or the long range questions which arise in respect to changing rules, regulations, provisions of the contract or amendments to the contract.

"I think that pretty generally covers it, unless you have something specific."

Page 65, line 13:

"Q I will ask whether or not during 1963 the Exchange or the Board of Managers or any committee of

elrf 2 "Berg 2012

of the Exchange took any action which was designed to insure that there would be orderly marketing on the Exchange?

"A Quite a number.

"Q Tell me what those were.

"A Well, your daily observation and supervision of trading on the floor. The Committee on Cottonsees Products is aware of what the marketing conditions are, and it considered, as you know, the licensing of warehousemen, and the expansion in various licensed warehouses of licensed space, the observation of the market itself by all who were concerned on the Board and the Committee, seeing to it that the market information was promptly and properly posted, checking of ex-pit reports, discussions between the president and myself, and later in 1963 between the president and the chairman of the Cottonseed Products Committee and myself.

"Several different inquiries that I made, and upon which I reported to the president. This is all prior to November 14th?

"Q Yes.

"A That is all I can think of at the moment.

MS. MEIBURGER: Continuing:

"Q Mr. Berg, does the Produce Exchange seek to

elrf 3 "Berg" [2013]

prevent manipulation of prices on the Exchange?

"A We provide for the prevention of manipulation -- provide means for the prevention of manipulation, I think would be a better description.

"One of the purposes of our existence is to inculcate just and equitable principles of trade.

"Q You say you provide means for the prevention of manipulation.

"Would that be the same means you identified in response to orderly marketing, that is, the total structure?

"A Yes, rules preventing manipulation, rules calling for punishment of persons found guilty of manipulation.

"Q Mr. Berg, did the Produce Exchange in 1963 seek to prevent manipulation?

"A Yes.

"Q In its efforts in seeking to prevent manipulation, was there any particular action that was taken by the Exchange or the Board or any of the committees which were designed to insure that there would be no manipulation?

"A I think that everything the Board did was -- our whole structure contemplates the orderly marketing

elrf 4 "Berg" 2014

process which by definition excludes manipulation.

"Q And would the same be true, then of cornering?

"A Certainly

"Q Just so I understand, the structure which you referred to, and the particular actions which you referred to as having been taken in 1963, and which were designed to insure orderly marketing were also the actions or steps taken in 1963 which were designed to insure that there would be no manipulation or cornering; is that correct?

"A Inherent in the term, I would think.

"Q So that we will be clear, was there any other action, other than those that you can remember when you were discussing orderly marketing, which was particularely keyed to manipulation or cornering, that is, preventing or designed to insure the prevention of manipulation and cornering?

"A I don't know where to start on this.

"Between the president and the chairman of the Cottonseed Products Committee and me, we all had conversations with and made inquiries of a number of different people, concerning the cottonseed oil futures market in 1963.

"Q Is it fair to ask you to be a bit more specific

knows.

"Q Would the same be true of the open interest, that is, anybody on the floor would know what the open interest is?

"A In numbers, yes.

"Q But not composition?

"A No.

"Q As secretary or managing director of the Exchange, do you keep yourself advised of the composition of the open position?

"A No -- the answer is no.

"Q Is there anybody of the Exchange or committee or person, employee of the Exchange, whose duty it is to keep himself advised of ex-pit transactions?

"A Several.

"Q And who is that, sir?

"A Initially the reports come into my office by telephone. They are reported to the floor and are posted. Then they are recorded. The repo-ts come from both sides. The reports are checked to see if they coincide. If they do not coincide, inquiry is made.

"Errors are corrected. The reports are confirmed in writing. They are checked to see if they coincide and if they comply with the rules. They are

elrf 7 "Berg" 2017

acknowledged and filed. That means that people who are concerned with the ex-pits are the various people in my office -- I am, when I am present, and the recorders in the box. That is about it -- and everyone is aware of it -- of them.

"Q When you say everyone, you mean the people on the floor?

"A The people on the floor, the people in the market itself.

"Q You say that everyone is aware of the ex-pit. By that do you mean aware that an ex-pit has been consummated?

"A Yes.

"Q Is there any information available as to the parties which engage in an ex-pit?

"A Only to those persons in my office who receive the communication, to me, of course, and the president. These are not normally routinely reported to the president. He hears about them, or they would be made available on the order of the Board to others, but not otherwise.

"Q Mr. Berg, you say that the reports come in. Can you tell me what comes in on an ex-pit?

"A We will get a call from a commission house, for example, 'We would like to report 15 March cotton oil ex-pit no change of ownership.'

& Gamble. I would get a concurrent report from the other side naming their customer.

"Q And that would be an indication of what the futures or exchanges were --

"A That told you what the futures were and the exact commodity for which they were exchanged, and the customer for whose account the business was done.

"Q I think you had already said that this information was checked by you or a member of your staff. Is that correct?

"A The one report was checked as against the other one, yes, for inaccuracies or effors, which happen from time to time.

Q You said you also checked to see if it complied with the rules?

"A That is right.

"Q Do I understand by that that you mean whether it actually involved an exchange for cash?

"A If an ex-pit is entered into that involves a change of ownership, and does not simultaneously involve an exchange for or against the cash commodity. It is against the rules; it is not permitted. That is what our check was relative to.

"Q No, Mr. Berg. All I am trying to understand

"These exceptions occurred some time shortly after September 4th or September 5th or September 6th, and arose out of a meeting that I had with Mr. DeAngelis, and occurred in respect to Allied Crude."

MS. KAYE: Page 92, line 7:

"Q Mr. Berg, returning for a moment to the Complaint Committee, to your knowledge did the Complaint Commottee receive any complaint in 1963 up to November 14th with respect to an alleged violation of the trading rules or the conduct of any member or the transactions of any member?

"A No.

"Q Did the Complaint Committee in 1963 receive any complaint regarding the position of any member on the Exchange or the customer of any member on the Exchange?

"A No.

"Q Mr. Berg, to your knowledge, did the Complaint Committee meet during 1963?

"A Not that I recall.

"Q Mr. Berg, with respect to the Quotation and Supervisory Committee, did that Committee receive any complaint in 1963 with respect to an alleged violation of the trading rules or the conduct of any member or the transactions of any member on the Exchange?

gwrf 7 "Berg" 2028

"A Not that I can recall.

"Q Did that Committee receive any complaint during 1963 with respect to the positions in cottonseed oil futures contracts, of any member of the Exchange or customer of any member of the Exchange?

"A No.

"Q Mr. Berg, did that Committee receive any complaint at all in 1963 concerning an alleged violation of the bylaws or rules of the Exchange?

"A Not that I can recall."

MS. MEIBURGER: Page 96, line 5:

"Q Mr. Berg, during 1963 was the secretary's office or any of the staff, salaried staff of the Exchange ever requested by any committee of the Exchange or the Board of Managers of the Exchange to investigate any activities of members or market conditions in conttonseed oil futures contracts?

"A. Yes.

"Q Can you tell me what that was, sir?

"A I am including in your terminology the Board of Managers' action by the president on behalf of the Exchange and it arises in this manner:

"He and I had from time to time discussed trading on the floor, the amount of business that was

being done, the fact that numerous deliveries were being made, all kinds of information about the market. There are so many I don't think I could list them all. We were in fairly constant communication with each other on the affairs of the Exchange as a whole which included trading in cottonseed oil futures. We discussed the fact that Ralph Peters and Co. was apparently doing business for or in connection with theAllied group as well as apparently for other customers and for his own account.

"This was occasioned because Ralph Peters was a relative newcomer to the scene of the Produce Exchange.

When or about the time that Allied -- when I say Allied, there were a number of corporations who were affiliated with Allied and we thought of them as a more or less whole unit. We had been led to believe that Mr. DeAngelis was the guilding factor in their activities, but we did not know whether he had control of all of them or what the various corporate structures were.

"So about the time that this business was transferred from Peters to Haupt it became a matter of conversation with us. I had discussed it with Milton Goldfogle either just before or at the time that the

gwrf 9 "Berg" [2030]

business moved over because Milton was going to handle Haupt's wire on the floor and as a result of these conversations, Mr. Goldfogle made an appointment for me with Jack Stevens of Haupt & Co.

"That was one of the investigatory type of activities I undertook.

"I also had a meeting with Mr. DeAngelis subsequent to that time. I had previous conversations with the floor brokers who I assume were doing the Allied complex business and I did subsequent to that time have other conversations with them.

"I also had another discussion with Mr. Stevens and Mr. Goldfogle and I had made several inquiries of Jerry Gittleman who was the oil trader for Allied and with Ralph Peters.

"Are you including, Mr. Lobell, the conversations of which you are aware, I am sure, that we had with Mr. Anderson, Mr. Klein and Mr. Forti on the 13th, I believe it was?

"Q Yes.

"A All right. I will include those then.

"In a subsequent communication I had with Alex Caldwell, the Commodity Exchange Authority, that is all I can recall at the moment. All these discussions,

gr1 "Berg [2033]

MS. KAYE: Page 102, line 13:

"Q Mr. Berg, during 1963 and prior to November 14, to your knowledge, did the business conduct committee receive any complaint with respect to an alleged violation of the trading rules or the conduct of any member of the exchange or the transactions of any member of the exchange?

"A Not that I recall.

"Q Did that committee receive any complaint in 1963 with respect to the positions of members in cottonseed oil futures contracts or customers of members prior to November 4, 1963?

"A Not that I know of."

MS. MEIBURGER: Continuing along.

"Q Mr. Berg, to your knowledge did the business conduct committee meet during 1963 and prior to November 14 of that year?

"A Not that I recall.

"Q I believe yesterday you testified that one of the committees whose meetings you attended as secretary of the exchange was the cottonseed products?

"A Yes.

"Q And soybean oil committee; is that it?

"A Yes.

"They might well be one of the means used in a sense as an investigatory committee.

"Q Mr. Berg, you say the cottonseed products committee might be one of the means used as an investigatory committee. To your knowledge, is that committee charged with the responsibility or obligation of investigating to determine if there are orderly markets or manipulation of cornering on the exchange?

"Charged by the bylaws or the rules.

"A I think any official of the exchange or any committee of the exchange is charged to provide means to prevent manipulation, and that would of course include the cottonseed products committee, and that is where their investigatory function might operate.

"Q Mr. Berg, when you say the committee is one of the means used as --

"A Maybe --

"Q Maybe one of the means used as an investigative committee, could you explain to me what you mean by that? In what respect?

"A If it came to the attention ofthe committee either by one of its members or by a report to the committee that there was something that needed inquiry or investigation, depending upon the circumstances they

might undertake a preliminary investigation, they might report what they heard or felt or thought to the president, which is in effect reporting to the board.

"This is sort of a broad question.

"The committee has undertaken in the past hundreds of more or less informal inquiries as to many things occurring in the conditions surrounding the contract and the market.

"Q Mr. Berg, to your knowledge, during 1963 did the cottonseed products committee undertake any investigation to determine if therewas orderly marketing or if there was an attempted manipulation or corner on the exchange prior to November 14, 1963?

"A Not that I recall."

BY MS. KAYE:

"Q By investigation, Mr. Berg, I mean either a formal investigation or informal.

"A Not that I can recall. There was no need for the committee to undertake anything of that nature."

MS. KAYE: Page 108, line 5.

"Q Mr. Berg, you say that no investigation was necessary in 1963 because there was no evidence that a manipulation had occurred or that a corner had occurred; is that correct?

"Prior to November 14; is that correct?

"A That's right.

"Q To your knowledge was there any discussion at any meeting of the cottonseed products committee as to whether or not a manipulation might be occurring or whether a corner might be occurring?

"A No, not that I recall.

"Q Mr. Berg, to your knowledge was there any discussion at a meeting with any other committee of the exchange, and by that I include the executive committees, or at a meeting of the board of managers, as to whether or not a manipulation might be occurring or a corner might be occurring?

"A No.

"Q Mr. Berg, to your knowledge was there any discussion at any meeting of any committee of the exchange or the board of managers of the exchange during 1963 and prior to November 14, concerning the possibility of disorderly market on the exchange?

"A Not that I recall.

"Q Mr. Berg, during 1963 and prior to November 14, to your knowledge did anyone ever suggest at any meeting of any committee of the exchange or any meeting of the board of managers of the exchange, that a

gr6 "Berg [2038]

manipulation might be occurring or a corner might be occurring on the exchange?

"A Not that I recall.

"Q Mr. Berg, during 1963 and prior to November 14, did anyone ever suggest at any meeting of any committee of the exchange or at any meeting of the board of managers of the exchange, that the position in cottonseed oil futures contracts of any member or group of members of the exchange or customers of any member or group of members of the exchange was too large or excessive?

"A Not that I can recall.

"Q Did anyone ever suggest at any meeting of any committee or the exchange or any meeting of the board of managers of the exchange during 1963, and prior to November 14, that the position of any member or group of members or customer of any member or group of members, posed a threat to orderly marketing on the exchange?

"A Not that I recall.

"Q Mr. Berg, during 1963 and prior to November 14 of that year, to your knowledge was there ever any discussions at any meeting of any committee ofthe exchange or any meeting of the board of managers of the

gr7 "Berg [2039]

exchange with respect to the position of any member or group of members in cottonseed oil futures contracts or customers of any member or group of members?

"A Not that I can recall."

MS. KAYE: Page 115, line 24.

MS. MEIBURGER: Continuing at that point, page 111, line 7.

"Q Mr. Berg, was the subject matter of the open position in cottonseed oil futures on the exchange or who held the open position ever discussed, to your knowledge, at any meeting of any committee of the exchange or the board of managers of the exchange during 1963 and prior to November 14 of that year?

"A Well, it really requires two answers.

"The first, as to the open interest, this wasn't discussed as I recall it, formally in any of the meetings you have mentioned.

"Everyone who had any interest in the market knew what the open interest was. There might have been some comments in the course of a meeting,prior to a meeting or after a meeting as to the open interest, but these wouldn't be recorded. This is not a matter of great moment; everybody knew it.

"As to who held theopen positions, the traders

big factor in the market from what it did, and the fact that they held a large position.

"Can you tell me, when you say from what it did, can you tell me what Allied did that would provide this knowledge?

"A Yes.

"Allied was known to be, and everyone in the trade took this as a matter of fact -- the largest exporter or supplier to exporters of vegetable oil in the United States, which is the world's largest exporter of fats and oils.

"Everyone in the trade who had any interest knew what commission houses stopped the transferrable notices. They knew what commission houses issued the transferrable notices and they knew from what warehouses the warehouse receipts were to be issued.

"They drew their own conclusions when Peters, Comenzo, Williston, Haupt, stopped notices and when they saw who the warehouse receipts -- who issued the warehouse receipts, it was pretty obvious that those concerns had had a short position and could reasonably be expected to have short positions in the future months.

"This is not true knowledge, but it is informed speculation on positions.

elr7 "Berg [2050]

constitutes or transfers title whichis required before banks will pay against letters of credit.

"And in addition to our Bureau of Chemistry at that time we operated a grain inspection department in the Port of New York and one of the services we offered was check weighing and sampling of commodities and we did a substantial amount of that work in Bayonne and in Jersey City for Allied, for Transworld, for Shortening Corporation of America.

"I was perfectly aware of that.

"Q You say you knew for a fact that Allied was doing a large volume of business?

"A Yes.

"Q When you said large volume of business, did you there have reference to cash oil business?

"A Yes.

"Q Sales of cash oil?

"A Yes.

"Q Mr. Berg, during 1963 and prior to NOvember 14th of that year, didyou have any knowledge or information as to the extent of cash oil business which Allied was going?

"A No. I knew it was large.

"Q Did you ever make any effort to determine

elr8 "Berg 2051

the extent of cash oil business that Allied was doing?

"A No, it was none of my business.

"Q During 1963 and prior to November 14th, to your knowledge was there any discussion at any meeting of any committee or the board of managers of the exchange as to the extent of cash oil business which Allied was doing?

"A Within the same context that I have previously stated and excepting to the word 'extent', I would say yes, there were many comments about the cash oil business that Allied was doing.

"Again, this is no news. It doesn't require recording.

"Q Can you recall the substance of such comments, Mr. Berg?

"A Just the fact that the business was being done.

"Q By Allied?

"A In many instances that was a known fact. In other instances it was an assumption.

"Q During 1963 and prior to November 14th, were you ever -- you or any member of your staff ever requested by any committee of the exchange or the board of managers to make an investigation or

elr11 "Berg [2054]

assumed that Allied's futures position in cottonseed oil futures contracts was a hedge against commodities which it owned or sales which it had made?

"A Sales which it had made or was in the process of making.

"Q With that clarification?

"A Yes.

"Q During 1963 and prior to November 14th, to your knowledge was there any discussion at any meeting of any committee or the board of managers of the exchange as to whether or not Allied's futures position in cottonseed oil was actually a hedge against inventory which it owned or against forward sales which it had made or was in the process of making?

"A Again within the same frame of reference Iwould say certainly. The U. S. was shipping tremendous quantities of oil both in dollar business and under PL480, and under Food for Peace programs.

"The Department of Agriculture was buying substantial quantities of vegetable oils for school lunch programs, donations and so forth.

"DeAngelis was known or assumed to be the supplier of a large quantity of all these sales.

"Q I am sorry, Mr. Berg. Did you say within

elrf 5b pm 1 "Berg" [2056]

"Q During 1963 and prior to November 14th of that year, were you ever asked or any member of your staff ever asked by any committee of the Exchange or Board of Managers or official of the Exchange to attempt to determine whether or not Allied's position in cottonseed oil futures contracts was or was not a hedge?

"A No, with the exception of the inquiries I made, discussions I had with Stevens and DeAngelis which were done either at the direction of or in consultation with our president. Can we take a ten minute break? Are you at a good stopping point?"

Page 146, line 12:

"Q I believe you testified that at one point, I believe it was in September, you knew that Allied had a position of at least 2,500 contracts of cottonseed oil, is that right?

"A That's right.

"Q Can you tell me how you knew that?

"A At that point there was an ex-pit transaction between Ralph Peters & Co., I guess it was -- when I say Peters, I mean company as well, interchangeable -- and Ira Haupt & Co. I knew that Peters had been carrying contracts for Allied. As I told you, I had these conversations with Milton Goldfogle in relationship

elrf 2 "Berg" 2057

to his handling Haupt's wire on the floor, and having a business relationship with Haupt, and I also was aware of the fact that two of the brokers who had previously been giving up Peters' name on clearances were now giving up Haupt's name. By assumption that these were Allied account trades.

"Q Mr. Berg, you say two of the brokers.

"Could you identify who those brokers were?

"A Comenzo, that is A. J. Comenzo, and Fontana.

"Q Mr. Berg, you said you assumed that there were Allied trades. This was in connection with the ex-pit, is that correct?

"A Yes.

"Q Do you recall if by September 1963 the change of procedure to which you have testified yesterday, which required that the clearing member identify what customers account the ex-pit trade was for, was in effect?

"A I think it did; but it wouldn't have applied in this case because there was no change of ownership transfer.

"Q I see. So that rule only related to --

"A Cash in exchange for futures.

"Q So the 2,500 contract ex-pit that you referred to in September was just a change of ownership, but you

elrf 6 "Berg" [2061]

14th, to your knowledge did the Executive Committee or the Board of Managers of the Exchange ever receive any complaint with respect to an alleged violation of the trading rules or conduct of any member or transaction of any member or the customers of any member?

"A I don't recall it."

Page 157, line 11:

"Q During 1963 did you ever have occasion prior to November 13th and 14th to seek information from the Commodity Exchange Authority with respect to positions in cottonseed oil futures?

"A In 1963?

"Q Yes, prior to November 13th.

"A Well, not in the exact manner you posed the question, but I had talked to the Commodity Exchange Authority several times about the open interest in general, the trading in general, and the Allied complex specifically. His was an operation that was -- I am talking about his overall market operation now -- cash and futures, that was considerably larger than we had seen at any time in the past. There were many queries among the trading fraternities as to how he was able to do all the business that he was doing. I had learned through one source or another, and I couldn't tell you

what they are now, that the Commodity Exchange Authority had investigated Allied's trading several times. One of the sources was from the Commodity Exchange Authority. I asked them directly and I rather think I got the impression in 1963 that they were very close to the situation. I can't tell you how the conversations ran, but I do know there was some speculation in the course of the conversation, how he was able to do this business, what he was doing, and I know I asked the CEA, have you looked at him, are his operations all right, do you find anything that shouldn't be there; and the answer always was, 'We can't find anything that would require us to bring any charges.'

"Let me just finish my thought here.

"I also asked as to whether his operations were of a hedging nature, did they check into that, which is one of the features they would check in order to see that he was complying with the reporting requirement of the Act, and they said, 'Well, we can't find anything here that is wrong or that would warrant us to bring any charges.'

"Q Does that finish it?

"A Just one second. I don't recall now whether I asked for any indication of his position. I may

elrf 8 "Berg" [2063]

have, because I have a vague recollection at one time and another, and it may very well have been this time that the CEA repeated their normal attitude as to disclosure of information, that they were prohibited from disclosing individual positions, and this would be a logical consequence of a conversation of that nature. But I don't think I made a formal request to them of this nature. The fact that they told me they could find nothing wrong just sort of let it go at that.

"Q All right.

"A I think that is about the substance of the several conversations. Again, I would like to say here that this is 1963 you are talking about, and that is a long time ago. Trying to remember details. I am through."

MS. MEIBURGER: Page 166, line 22:

"Q I believe at one time we had been discussing your duties as secretary of the Exchange. You had included in that participation and attendance at meetings of committees and the Board. Could you describe for me what your duties are as managing director of the Exchange?

"A I am in charge of the operations of the

Exchange, reporting to the president of the Exchange. I carry out the execution of the policies of the Exchange as determined by the Board, the Executive Committee, and the president.

"Q You say in charge of the operations of the Exchange?

"A Yes.

"Q By that, do you mean the every day business affairs of the Exchange?

"A Yes.

"Q You said report to the president of the Exchange. Is there any particular matter with respect to which you regularly report to the president of the Exchange?

"A All matters of consequence.

"Q Could you give me an example?

"What type of matters? The financial condition of the Exchange?

"A Yes. That occurs after audit quarterly. If there are any material changes that had occurred or appeared might occur, I would discuss those with the president. Maturing investments, bank loans, any important personnel changes. Attending discussions on changes in rules, if the president had not attended

elrf 10 "Berg" [2065]

meetings of the committees concerned. The necessity for filling vacancies on committees. There are inumerable things that I might discuss with him.

"Q Do you as managing director of the Exchange attempt to keep yourself advised of market conditions in cottonseed oil futures contracts or cottonseed oil?

"A I generally am aware of what the market is doing. I don't study it as a trader does.

"Q Do you as managing director of the Exchange, are you concerned with preventing manipulations or corners on the Exchange and maintaining an orderly market?

"A Yes.

"Q In that regard is there any regular information or activity which you keep yourself advised of in attempting to discharge that function?

"A As I said, I am generally aware of what is occurring in the market. I am also familiar with the rules and bylaws and procedures for taking disciplinary action. I am aware that such things as wash sales, fictitious trades are prohibited. If I were to be present on the floor when such occurred and it was detectable at the time, I would take whatever steps were warranted under the circumstances.

"As far as running a corner or a manipulation,

gwrf 6a pm 1 "Berg" [2067]

Page 169, line 11:

"Q Mr. Berg, you say you don't think you can determine that until it has occurred unless you are a party to it. By that I take it you mean a manipulation or a corner?

"A Yes.

"Q Do you have any understanding of the term manipulatio ?

"A In the real broad sense I think I can give you my opinion.

"Q Could you please?

"A It is an action intentionall taken to move prices in such a manner that they would not be truly reflecting supply and demand factors."

MS. MEIBURGER: Page 73, line 4:

MS. KAYE: Page 172, line 14:

"Q During your tenure as secretary and managing director of the Exchange, did you ever have occasion to conduct an investigation to determine whether or not a particular action on the Exchange constituted a manipulation or a corner?

"A Via the Control Committee. As I mentioned before, we had conducted in stigations to determine what the positions and intentions were. Certainly if

gwrf 2 "Berg" [2068]

we had thought there was a manipulation, we would have investigated more thoroughly with the purpose of ascertaining whether or not as a fact there was a manipulation occurring.

"But in the instances I have described there was no manipulation."

MS. MEIBURGER: Following along there, page 173, line 4:

"Q The instances you have described, I think you are referring there to the one instance of 1946 and 1947?

"A There were three or four instances that we discussed.

"Q Mr. Berg, in those instances, you said you conducted an investigation to determine what the positions and intentions were?

"A Yes.

"Q What in particular with respect to the position was the investigation directed at? Were you attempting to determine the size of it?

"A To find out who was long, who was short, how many contracts they had, whether their position was hedge or speculative and what they intended to do.

"Q You said in order to find out who was long,

who was short, how many contracts they had, whether the position was hedge or speculative and what they intended to do?

"A Yes.

"Q Would those be the factors that you would be investigating or attempting to determine in order to ascertain whether or not a manipulation had occurred?

"A Yes, I think so."

MS. MEIBURGER: Page 189, line 13:

"Q Mr. Berg, do you recall, or to your knowledge, was there any insurance or was there any time during 1963 when the market was not liquidating in normal fashion?

"A Well, in the first place, this is a theoretical norm that I am talking about,again. Markets do different things under different circumstances.

"During 1963 I would say there were more deliveries as opposed to liquidation than there had been for prior years, in some of the months.

"But the deliveries were made, were taken up under very orderly market conditions.

"So this was not a circumstance which was away from the ordinary."

MS. MEIBURGER: Page 192, line 15:

gwrf 4 "Berg" [2070]

"Q Mr. Berg, subsequent to that time in September 1963 and up to and including November 13, 1963, did you have any knowledge or information as to the percentage of the open interest in cottonseed oil futures contracts which Allied's position in cottonseed oil represented?

"A No, not with any certainty.

"In my conversation with Mr. DeAngelis, he agreed that he had a large position in the futures. I don't recall if any specific percentage was mentioned. I think he said he had less than half, but I am not sure. This is a long time ago.

"Q Mr. Berg, did any of your other conversations or observations during the period September 1963 to November 13, 1963 tend to support or refute what Mr. DeAngelis said with respect to the size of his position?

"A Not that I was aware of."

MS. MEIBURGER: Page 194, line 3:

"Q Do I understand, then, Mr. Berg, that the only thing upon which you based your opinion as to the size of Mr. DeAngelis' position in cottonseed oil futures contracts, was his comment to you?

"A Aside from the fact that I knew that contracts were switched from Peters to Haupt, as I recall it,

and that it would appear from the brokers that were handling the business on the floor that Haupt, Comenzo, Williston & Beane, and Peters were more often buyers than sellers, but I had no means of relating that percentage-wise.

"Q Mr. Berg, to your knowledge, is there any committee or officer or employee of the Exchange whose function it is to keep advised of the volume of deliveries on the Exchange?

"A My office has a record of deliveries. Anyone who is interested in the market knows what deliveries have been made. It is not necessary to have somebody deputized to notice that -- everybody notices it in the market."

MS. KAYE: Page 195, line 7:

"Q Mr. Berg, to your knowledge, is there any committee of the Exchange or officer or employee whose function it is to keep advised of financial conditions of members of the Exchange?

"A When a member becomes -- that is, when an applicant becomes a member he furnishes a financial statement, and many firms automatically furnish us with copies of their quarterly, semi-annual or quarterly reports.

"Q Yes.

gwrf 9 "Berg" [2075]

would be in a position to meet his obligations to the Association on his contracts?

"A Yes."

MS. MEIBURGER: Page 208, line 20:

"Q You said before Stevens -- do I understand that the inquiry of Stevens as to Haupt's financial condition was related to the size of Haupt's position in cottonseed oil futures contracts?

"A That was one of the reasons that I inquired of Stevens, because I knew that they had taken on 25 odd contracts."

THE COURT: "2500 odd contracts."

"A 2500 odd contracts."

MS. KAYE: Page 210, line 15:

"Q Mr. Berg, do you recall if during 1963 and prior to November 14th, you ever had occasion to indicate to the president that you were concerned about the financial conditions or ability to meet obligations of any member of the Exchange or clearing member of the Association?

"A I reported to the president and discussed with him my conversation with Mr. Stevens. Based upon what we knew at that time, we were not worried about Haupt's inability to meet his financial obligations."

gwrf 16 "Berg" [2082]

"Q I think you said other firms would have failed. Is this as a result of the declines in prices which would have been occasioned if Haupt's contracts had been put on the market?

"A That was my belief.

"Q Can you tell me how this would cause other firms to fail?

"A Because when a clearing member fails, his obligations have to be, insofar as as a market is concerned, assumed by other clearing members. If those are too large to be taken up by some of the other clearing members, then they fail. These obligations are again whacked up until they are distributed to those remaining people who have enough money to absorbe the obligation.

"Q Whacked up?

"A Divided. That would also have occurred in the soybean oil futures market in Chicago.

"Q Do I understand then, Mr. Berg, when you said other firms would have failed, that you were then referring to clearing members of the Association?

"A I was referring to clearing members of the Association. I was also referring to other firms. You have had a number of firms that have gone through reorganization proceedings arising out of damages

imminent and complicated by Haupt's failure.

"Q Mr. Berg, I think you mentioned that if Haupt would have been unable to meet its obligations in the event of decline resulting from its contracts being put on the market, that other clearing members would have to divide the losses; is that correct?

"A That is my understanding of how it would operate.

"Q Do you recall if this was something that was discussed at the time the Board decided to order liquidation of Haupt's contracts?

"A I think the members of the Board all realized that this was inevitable.

"Q Do you recall if there was any discussion of that fact?

"A I think there probably was."

MS. KAYE:

"Q I think you also had said that if the contracts had not been closed, it would have affected any firm owning vegetable oil contracts.

"A Or oil.

"Q Or oil.

"A Or oil or other fats and oils.

"Q In what way?

"A Declining market. If you paid 15 cents

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gr1 "Berg 2088

MS. KAYE: Page 230, line 11.

"Q "We were talking about the effects if the Haupt contracts were not ordered liquidated, and you said other clearing members might fail and then other firms might fail.

"I think you said that with respect to the clearing members and their customers, that their failures might be caused by being required to meet Haupt's obligations, which would be divided up.

"Is that correct?

"A Correct.

"Q Will you tell me who the other firms were that you referred to?

"A I would think that certainly some of the smaller firms in New York and Chicago would have failed.

"Q Maybe I am not making myself clear.

"What type of firms?

"A All clearing members."

THE COURT: It's corrected to "small."

"A Small clearing members and maybe some medium sized clearing members.

"Your guess is as good as mine on that one."

MS. KAYE: Page 233 --

THE COURT: Wait a minute. It's added

gr2 "Berg [2089]

"And some big ones, too."

MS. KAYE: Page 233, line 19.

"Q I believe you testified that during 1963 there were numerous deliveries but they were taken under orderly conditions.

"A That is my opinion, yes.

"Q Will you explain to me what you mean by orderly conditions in that context, that deliveries were tekan under orderly conditions?

"A The market was trading daily.

"There were no dramatic price swings.

"Everytime someone wanted to buy something, why, he found a seller, and every time a seller wanted to sell something, he found a buyer.

"There was no evidence whatsoever of a disorderly market condition."

MS. KAYE: Page 235, line 19.

"Q Mr. Berg, I think you said that the exchange only gets unofficial quotes with respect to cash oil -- the prices of cash oil.

"A That's correct.

"Q Will you tell me where those quotes come from?

"A We don't record them. The exchange itself

gr5 "Berg [2092]

"But during that period of time, and since then and before then, I am greatly aware of what the refined oil market is, as well as the futures market, and as well as the crude oil market."

MS. KAYE: I think that last answer should read "generally aware."

MS. MEIBURGER: Page 238, line 15.

"Q During 1963 did you ever or were you ever requested to make an investigation or attempt to determine the relationship between prices of cash oil and futures prices?

"A No, there was no necessity for it. Everybody in the business is aware of the differentials."

MS. MEIBURGER: Page 243, line 19.

"Q Mr. Berg, during 1963 and prior to November 14th, to your knowledge, did the board or any committee or any official of the exchange request financial information or information as to the financial condition of Allied or DeAngelis?

"A Just in a general way, in the course of my discussion with Mr. DeAngelis, when he was complaining about his financing being hampered by some of his lenders.

"Q How about during the period November 14th

to November 20th, with respect to Allied or DeAngelis?

"A I did not. I think Mr. MacDonald talked to Mr. DeAngelis. Whether the 18th or the 19th, or the 17th or the 18th, I just don't remember."

MS. KAYE: Page 251, line 14.

"Q Mr. Berg, to your knowledge, does the exchange have any means at its disposal to prohibit a nonmember from engaging in prohibited transactions?

"A To the extent that we have control over a member, I suppose we would have some measure of influence on a nonmember who was trading through the member.

"I do not know whether such action that the exchange might take could be, as a matter of practical effect, enforced.

"Q Mr. Berg, to your knowledge did the exchange in 1963 have the power to prohibit a nonmember representation on the floor of the exchange?

"A I don't know.

"Q Mr. Berg, I would show you a copy of the New York Produce Exchange charter and bylaws, marked as Plaintiff's Exhibit 20, and I direct your attention to Section 34 and ask if that would refresh your recollection.

elr "Berg [2109]

me that the trading and the activity were somewhat similar to the previous year, previous several years. Only there was more of it, which is not necessarily unusual.

"In retrospect, that is something else again. But at the time it didn't seem to be out of the ordinary. This country was producing and shipping a tremendous quantity of vegetable oils."

MS. MEIBURGER: Page 279, line 7:

"Q Do you recall if during 1963 there was any discussion between the president and yourself as to the financial condition of any member of the exchange or any customer of any member of the exchange?

"A Oh, yes. In terms that Mr. Shealy has just stated, certainly.

"We have also -- we had also discussed, and I am not sure this was 1963, Peters' financial condition. We had also discussed, speculated, really, on who was financing the Allied complex, how many different people.

"We had reason to believe, from the talk in the trade, that Allied was receiving financial backing from a number of large trade houses. We must have discussed other people too, but I don't recall

elr "Berg [2111]

the president?

"A No.

"Q During 1963 did you have an opinion as to whether or not --

"A I thought it was quite possible.

"Q Thought what was quite possible?

"A Russian oil buying.

"There was quite a lot of talk in the trade about the possibility of it, and some people feeling more optimistic than others.

"That's what makes a market.

"Mr. Shealy: By 'it,' you mean that Russia was --

"The Witness: Was going to buy oil.

"Mr. Shealy: -- was in the market or was contemplating buying large quantities of oil in the United States; is that it?

"The Witness: Yes, that's it.

"Mr. Shealy: Vegetable oil, I meant to say, Mr. Reporter.

"Q To your recollection, did there ever come a time during 1963 and prior to November 14th, when you changed your opinion as to the likelihood of Russian oil buying?

elr "Berg [2113]

"A I don't really recall. Sometime in the end of 1962, early 1963; maybe the middle of 1963.

"I do know when the ex-pits were switched from Peters to Haupt, I asked Ralph Peters on -- one day he was on the floor.

"I said, 'I see some business switched over from your house to Ira Haupt & Company; how come?'

And he said, 'I guess Allied found they could do their business cheaper.'"

Page 289, line 2.

"Q Mr. Berg, I think you also said that at or about the time the Allied business was transferred from Peters to Haupt, you had discussed with Mr. Goldfogle, either just before or at that time, the fact of the transfer, because Mr. Goldfogle was going to handle Haupt's wire on the floor.

"Do you recall what occasioned that discussion, and did Mr. Goldfogle tell you that, or did you ask him?

"A I think he told me.

"Q And he told you that he was going to handle Haupt's wire on the floor?

"A Yes.

"Q Can you explain to me what that would

1b am elrf 1 "Berg" 2118

MS. MEIBURGER: Continuing at that point, page 294, line 3:

"Q Do you recall when the meeting was with Mr. Stevens?

"A No.

"Q Was it in September, do you recall?

"A I think it was shortly after the contracts went over, but I don't remember exactly when.

"Q The contracts that you referred to went over in the beginning of September?

"A Yes.

"Q Do you recall where that meeting was?

"A In Mr. Stevens' office.

"Q Mr. Berg, do you recall if the president indicated to you why he wanted you to talk to Stevens or someone at Haupt as a result of the ex-pit?

"A I think I indicated that before. It was a large number of contracts and Haupt had not been a big clearing member in cottonseed oil. They had done some cottonseed oil business from time to time over the years, but not that size. They were relatively speaking a new face in the picture.

"Q In your discussions with the president, did the president request that you look into anything

elrf 2 "Berg" 2119

in particular in connection with the conversation with someone at Haupt?

"A I don't recall him mentioning anything in particular. He may have.

"Q Well, do you recall what the sense of the discussion was? I mean, did the president just say, 'I think we ought to talk to someone at Haupt'?

"A What he probably said was, 'I think probably we had better talk to Haupt,' and I don't know how to phrase this. Explore, I guess would be as good a word as any. He didn't have to tell me what to talk to Haupt about.

"Q Why is that? Did you know what to talk to Haupt about?

"A I had a pretty good idea what I was going to ask him.

"Q What was that, Mr. Berg?

"A Well, there were quite a number of things that we discussed. In the first place, I established who he was and what his function was there, which Mr. Goldfogle had already told me, but I wanted his confirmation of it. And he represented to me that he was the controller of the organization, was in full charge of the Commodities Department, responsible for it.

elrf 3 "Berg" [2120]

"Q You say he. You mean Stevens?

"A Stevens, which corroborated what Mr. Goldfogle had told me. Mr. Goldfogle had also told me that Mr. Stevens had been a certified public accountant at one time, and I don't know whether Mr. Goldfogle or Mr. Stevens told me, or both of them, that he had worked for other commodities firms, and that he had instituted a whole new accounting system and procedures for Haupt & Co., because they had recently expanded their activities, according to reports that I heard, in the municipal bond field. He represented that he was totally familiar with the commodities futures market, which was really in response to a question I asked him.

"I said in effect, do you know what the hell you are doing here? I pointed out to him that vegetable oils can at times be very, a very volatile commodity, and that you can get rapid price changes, and he assured me he was fully aware of this.

"Also in the same conversation, I also pointed out to him that every cent a pound means $600 a tank car, and none of this was news to Mr. Stevens, according to his attitude. He didn't so much as tell me to mind my own business, but that was my reaction. I established that the account that had transferred from Peters to

elrf 4 "Berg" [2121]

Haupt was Allied, that Mr. Stevens had met personally with Allied and discussed the total picture with them. I asked him if he was obtaining margin on these trades, and he assured me that he was, that he had started out with $400 per contract margin and had increased it to $500 per contract margin.

"I asked him if he had assured himself that these contracts were hedges, and he said that he had. I asked him if he was doing any financing for Allied, and he said, yes, we are financing some export contracts for them. And he said, I am getting 50 and 60 per cent margin on the export contracts.

"I noted that there had been some changes in the partnership structure. Ira Haupt had died. Several new partners had been taken in, both limited and general, as I recall now. I had reason to believe that Mr. Goldfogle was going to become a partner, and I had reason to believe that Mr. Stevens was going to become a partner at the same time, which information I had gotten from Mr. Goldfogle. I told him that I had looked at Haupt's financial statement, and as I recall now, it showed about six and a half million capital, and I asked him if that had changed, and he said, oh, yes, it is much better, and it is going to be much better

on December 11st. It will be up a couple of million dollars, or some figure in that neighborhood. That is all I recall now about the conversation. I suppose I was in his office maybe a half hour as we discussed this business. It all wasn't as short as I have related it here.

"Q Was anyone else present, do you recall?

"A I believe a portion of the time his secretary was there. I don't think she was there throughout.

"Q Was Mr. Goldfogle present?

"A No, Mr. Stevens appeared to me, incidentally, to be fully capable and knowledgeable. I didn't have to explain terminology to him, he knew, or represented that he knew the commodity business."

BY MS. KAYE:

"Q I believe that you had said that you knew what you wanted to talk to Haupt about. Was this desire to talk to Haupt motivated by anything else than the fact that Haupt had just taken over the contracts from Peters and that Haupt was a relative newcomer to cotton-seed oil?

"A Yes. I think the fact that Allied was not represented in membership of the Exchange was one of the reasons. If it had been a Proctor & Gamble account,

this business. I didn't have any doubts about their competence in their function as a member of the New York Stock Exchange, but they had not done this type of business before, in this market, anyhow.

"Q Do you recall if you asked Mr. Stevens anything about Allied's financial condition, during your meeting with him?

"A Oh, yes. I must have made some inquiry as to -- did he feel that Allied was all right, were they meeting their margin calls or were they having any difficulty with the account. He assured me they were not having any difficulty.

"Incidentally, when I queried Mr. Stevens about margin, not only did he state that they were depositing margins promptly, but he was requiring them to maintain the margins.

"Q By them, you mean Allied?

"A Yes.

"Q I think you said that if it had been Proctor & Gamble, you wouldn't even have made a phone call because they were members and that you knew they were financially responsible.

"Did you, prior to or in connection with your meeting with Mr. Stevens, have any concern about Allied's

elrf 8 "Berg" (2125)

financial responsibility?

"A No.

"Q Prior to your meeting with Mr. Stevens, did you have any knowledge or information about DeAngelis' business, prior business background?

"A Yes.

"Q Can you recall what knowledge or information you had?

"A A little hard to separate out what I knew at that time and what I know now from what I have read since that time. I knew that one of his companies had gone through reorganization. I knew that he had some transactions in futures which wound up with debit balances, and I was told that he --"

MS. KAYE: I think you left out a word.

Could you read the answer, please?

"A I knew that he had had some transactions in futures which wound up with debit balances; and I was told that he paid those debit balances personally. I knew that at one time after I think -- after, I think it was after Gobel was reorganized, I'm not quite sure, that there were a number of people that wouldn't do business with him. I also later was told by several people that he had cleared up all the debts that he had

gwrf 2a am 1 "Berg" [2127]

MS. MEIBURGER: Page 305, line 15:

"Q Do you recall if during 1963 and prior to your meeting with Mr. Stevens you knew whether or not a civil fraud suit or any suit was filed by the United States Government against DeAngelis arising out of the shipments of soybean oil to Spain?

"A No, I don't think I knew a civil suit was filed.

"What I did know was that -- 1961 -- you will know this better than I will -- DeAngelis was suspended from any trading relationship with the United States Government and made a settlement with them and then continued to do business with them.

"I just don't remember whether -- are we talking about the same thing?

"Q Yes.

"A We are."

MS. KAYE: Page 310, line 8:

"Q Do you recall if at any time in 1963 and prior to November 14th you ever heard that Allied's financial condition was strained or that it was having difficulty obtaining financing?

"A Prior to my conversation with DeAngelis, I don't believe I did.

"Q Did you ever hear it from any source other

than your conversation with DeAngelis?

"A Just to this extent:

"I had, after my conversation with Mr. DeAngelis, I had checked with both Bunge and Continental to have them corroborate that they were keeping a finger on the financing of his operations, and indeed, he would have liked to borrow more money, but both companies were not willing to give him all the financing he wanted."

MS. MEIBURGER: Continuing along there, page 311, line 2:

"Q I take it that you did know, prior to your meeting with Mr. Stevens, that Mr. DeAngelis had been suspended from the Chicago Board of Trade?

"A Yes, I did.

"Q Did you know the reason for that, the nature of the transactions that were involved?

"A I think the stated reason the Board gave for suspension was a reference to one of their rules, which prevents wash sales.

"I made some inquiries into the background of this and here is where I don't remember whether it was the Government or somebody on the Board of Trade.

"Anyhow, I was informed, and from a source which I believe reliable and I believed what I was told, that

gwrf 5 "Berg" 2131

"A Probably from the late 1950's onwards.

"When was this suspension by the Government of DeAngelis' trading privileges? Did you say 1963? It was prior to that by several years."

MS. KAYE: Page 315, line 20:

"Q I think you mentioned that DeAngelis told you that he was the largest exporter of lard to the United Kingdom.

"When was that?

"A When I talked to him.

"Q Do you recall when that was?

"A Shortly after I talked to Stevens.

"Q Sometime in September of 1963?

"A Yes.

"Q Did DeAngelis at that time say anything about the volume of his exports of cottonseed oil or soybean oil?

"A In numbers? No. Descriptively, yes.

"Q Do you recall what he said?

"A Yes. He stated that he was doing a tremendous volume of business in all kinds of fats and oils -- edible and inedible."

MS. MEIBURGER: Page 316, line 24:

"Q Mr. Berg, I believe you said you had talked

to Bunge and Continental.

"Do you recall when that was?

"A Shortly after I talked to Mr. DeAngelis.

"Q Do you recall whom at Bunge you spoke to?

"A I am not sure. I think it was probably Richard Forti.

"Q How about at Continental Grain?

"A Probably Harold Vogel.

"Q Do you recall what you spoke to Mr. Forti about?

"A I spoke to both of them about the same subject -- that I had had a discussion with Mr. DeAngelis and in the course of the discussion he explained that he was being hampered in his financing by Bunge and Continental refusing to give him all the funds he thought he needed, and they confirmed that that was the case.

"MR. PAULUS: They confirmed that they were not giving him all the funds he asked for?

"THE WITNESS: That's right.

"Q Do you recall what led you to inquire as to whether or not Bunge and Continental were giving DeAngelis all the financing that he asked?

"A No. I didn't ask their reasons. Every company

has limits on --

"Q I meant you, sir.

"Why did you inquire as to whether or not that was the case? Was it merely because Mr. DeAngelis had said it.

"A I wanted to get some corroboration of what Mr. DeAndelis had been telling me. I was trying to get a look at the whole picture.

"Q Just one more question.

"In checking, were you merely testing Mr. DeAngelis' credibility or was it relevant to know whether or not he was getting all the financing that he wanted?

"A I think when you are discussing something like that, anything is relevant that you learn.

"Q Was it relevant to the purpose of your inquiry with Mr. DeAngelis?

"A The purpose of my inquiry was -- was to find out from Mr. DeAngelis something more than we already knew or assumed about his operations, what he was doing, why he was doing, why he was long a substantial quantity of futures, whether they were hedges or not, something about his financing."

MS. MEIBURGER: Page 332, line 17:

gwrf 8 "Berg" 2134

"Q Mr. Berg, at or about the time of your first meeting with Mr. Stevens did you have any reason to believe that Allied would be unable to meet its obligations to Haupt on the contracts which were purchased by Haupt for Allied's account?

"A No.

"Q Did you have any reason to believe that at any time thereafter and up to November 14, 1963?

"A I was certainly concerned when I learned that the Allied account constituted about 90 per cent of the long side of the market, but prior to that time I had no reason to believe either Haupt or Allied would have any financial difficulties."

MS. MEIBURGER: Skipping to line 21 on page 333:

"Q Mr. Berg, you said you were concerned when you learned that Allied's position was 90 per cent of the long; you learned that when, the 13th?

"A The 13th."

gr2 "Berg [2136]

"Q The 17th would be a Sunday and the 18th would be a Monday.

"A Then it would have been the 18th, I believe.

"It possibly could have been the preceding Friday evening, but I am just not sure.

"Q The preceding Friday, you mean the 15th?

"A Tht 15th."

MS. KAYE: Page 338, line 9.

"Q I believe you said that when you learned that Allied's position comprised the 90 per cent, it was your ultimate concern whether Allied would be able to meet its obligations on its contracts.

"Were you at that time, Mr. Berg, also concerned about Haupt's ability to meet its obligations on those contracts?

"A No, I don't think so.

"I had been reassured by Mr. Stevens' approach to this. Haupt was an old-line firm, well known in the street.

"They had weathered the depression and a number of price movements as the stock market prices changed over the years. They were a respected house."

MS. KAYE: Page 339, line 8.

"Q Mr. Berg, I believe you previously testified

gr4 "Berg 2138

"A They had taken in quite a number of new partners, both general partners and limited partners, and they were going to take on some more.

"The usual procedure, when a stock exchange firm takes on more partners, is they also get additional capital from those partners, as I understand it.

"Q Mr. Berg, did Mr. Stevens tell you that Haupt was going to take on more partners?

"A Yes.

"Q He did?

"A Yes.

"Q Did he give any indication of who these partners were?

"A Just that there were several, and the intimation was that he and Milton Goldfogle were to be two of them. I don't know how many in total."

MS. KAYE: Page 342, line 22.

"Q Mr. Berg, you do recall, however, at your initial meeting with Mr. Stevens, he indicated that he had spoken to the Allied people and had been over at Bayonne?

"A Yes.

"Q On more than one occasion?

"A That was the impression I got, that it was

elr "Berg [2142]

MS. KAYE: Page 346, line 11.

"Q Mr. Berg, at or about that time, that is, November 13, 1963, did you have any reason to believe that prices for cottonseed oil futures contracts would decline in thenext week or two?

"A No. If I was that smart, I would be doing something else right now.

"Q Mr. Berg, I think you did testify, however, that you were concerned about Allied's ability to meet its obligations on the contracts, once you learned the extent of its position.

"Was that concern based upon the size of Allied's position?

"A Yes, certainly that had something to do with it. That is a lot of contracts."

Page 349, line 2.

"Q Mr. Berg, at or about November 13th or 14th, 1963, did you have any knowledge or information as to whether or not Allied or Haupt would have to liquidate Allied's contracts?

"A No.

"Q Did you have any reason to believe at that time that Allied's contracts would have to be liquidated in a hurry?

elr "Berg 2143

"A No."

Page 352, line 19.

"Q Mr. Berg, at your initial meeting with Mr. Stevens, did he tive you any indication as to whether the original minimum margin which he required of Allied was paid in the form of cash or check, or whether he was accepting product margin?

"A No, he didn't.

"I assumed it was by bank transfer of funds, which is the normal method of obtaining margin.

"It wasn't until sometime after November 20th, when I was reading some of the -- either the testimony or reports on this whole Allied business, that I had ever heard of the use of product -- heard the words 'product margin.'

"Margin, to me, is cash or securities.

"Q Then I take it, at your meeting with Mr. Stevens, there was no discussion as to product margin?

"A No. I am sorry, there wasn't.

"Q Whi is that?

"A One doesn't ordinarily take as margin collateral representing the same commodity which is being collateralized. It is one thing to take, say, government bonds or high grade securities as margins

elr "Berg [2144]

for a commodity account.

"It is quite something else to take the same commodity. And the reason is obvious.

"If your market declines, the value of your collateral declines as well."

Page 354, line 9.

"Q I believe you also mentioned that Mr. Stevens indicated to you that Haupt was financing Allied, and that they were getting 50 to 60 per cent margin on export contracts.

"A That is what I was told.

"Q Did Mr. Stevens indicate to you the nature of the financing? In other words, that it was financing against export contracts?

"A That is what he said.

"Q Did you understand what he meant by export contracts?

"A I will tell you what I thought he meant.

"I thought he meant that he had obtained from Allied a contract for the exportation of a quantity of oil at a price to a buyer that was satisfactory as far as Haupt was concerned to loan money against."

Page 356, line 3.

MS. MEIBURGER: I'd like to fill in a few

elr "Berg 2145

questions Mrs. Kaye skipped, at the bottom of page 353, line 21.

"Q Mr. Berg, I believe you mentioned that Mr. Stevens indicated that he had raised the margin from $400 to $500 a contract.

"Did he tell you when he had done that?

"A No.

"Q Did he tell you why?

"A No. And I would not have asked him why because I thought that he was being careful and conservative. To me the reason was obvious.

"Q What was that, Mr. Berg?

"A He was being conservative. The more money you have as margin, the more protection you have against an account."

MS. KAYE: Page 356, line 3.

"Q Mr. Berg, do you recall if Mr. Stevens indicated to you whethre or not he was satisfied with the contracts that Haupt was financing, export contracts?

"A No. But if he wasn't satisfied with them, why was he loaning money on them?

"Q Did he indicate to you that he had made any inquiry or check as to the validity of the contracts

elr "Berg [2146]

or check with the buyers?

"A No.

"Q Was that discussed at all?

"A No.

"I thought that I was talking to an intelligent, knowledgeable, conservative man, and I had no reason to ask him that question.

"He didn't volunteer anything either."

Page 360, line 3.

"Q Mr. Berg, I believe you had mentioned that you were reassured about Haupt's ability to meet its obligations by what you had discussed with Mr. Stevens.

"Was this reassurance in connection with what Mr. Stevens said at your first meeting with him?

"A Yes, in this sense, reassurance is perhaps not quite the word to use here. I was not concerned about Haupt's ability to meet its financial obligations. I just wanted to know enough about the picture so that I knew that they knew what they were doing and they were handling it properly.

"Q And after your meeting, first meeting with Mr. Stevens, were you satisfied that they knew what they were doing and were handling it properly?

"A Yes."

elr "Berg 2147

MS. MEIBURGER: Page 367, line 15.

"Q Mr. Berg, do you recall if in 1963 prior to November 14th, the rules of the produce exchange contained any requirements with respect to an account -- I am sorry -- as to the conditions when an account would be entitled to hedging margins?

"A When the commission house has satisfied itself that the account was a hedge account.

"Q Was that --

"A That was usually done by the commission house requiring the customer to certify in writing to the clearing member or to the carrying member that the transactions are hedging transactions.

"Q Mr. Berg, at your initial meeting with Mr. Stevens do you recall if he indicated to you that Haupt had required and received such a letter from Allied?

"A No. I assumed that Ira Haupt & Co., was following the rules of the exchange. I saw no reason to go behind his statement.

"Q You didn't ask him whether he received such a letter?

"A No. Or if I did, I don't remember now, anyhow. From what I can recall now and my recollection

elr "Berg [2148]

of the impressions of that meeting, why, again, Ira Haupt was a respected house."

Page 370, line 25.

"Q You also mentioned DeAngelis, a conversation with DeAngelis. Do you recall when that was, Mr. Berg?

"A No, not exactly. Sometime after I talked to Stevens.

"Q Did you --

"A It could have been a week, ten days, two weeks. I just don't know.

"Q Mr. Berg, do you recall what was discussed in that conversation with DeAngelis with respect to whether or not the contracts, his contracts, were hedges?

"A Yes. He told me that he was the largest exporter in the United States of fats and oils.

"Now, I took that to mean exporter or supplier to exporters, because we knew that he had been doing business with a number of these other firms that I had mentioned earlier, that he had a tremendous volume of sales, and that he had to have some price protection for these sales, and that price protection could be only obtained through the purchase of cottonseed oil and soybean oil futures. I don't recall

elr "Berg [2149]

whether he mentioned soybeans or not. In short, that is the net of the conversation.

"He made mention of sales that he had made and sales that he hoped to make, but I don't remember the details of it.

"Q Do I understand by that, Mr. Berg, that the conversation which you just testified to was the extent of the inquiry made by you as to whether or not DeAngelis' contracts were hedges?

"A Well, we talked quite a bit about it. He was in my office for, oh, half an hour, 45 minutes, but this is the net of the conversation. That's what he neede d the contracts for.

"He was filling a lot of PL480 business, Food for Peace business, he was doing a substantial amount of drumming, canning, and he was doing some free dollar business and I knew that he had done some previously.

"He sold quite a lot of business to Italy, which was free dollar business or which was at one time, and Spain as well. So that this just wasn't a three second explanation of what his position was. This was quite an exposition."

MS. KAYE: Continuing.

elr "Berg [2150]

"Q Mr. Berg, do you recall if during your meeting with Mr. Stevens or Mr. DeAngelis, you obtained any information as to the size or number of contracts Allied held in cottonseed oil futures or soybean oil futures?

"A Yes, but this is sort of a cloudy ara. I knew that he had 2500 odd contracts because they had been identified for me, and I mentioned this to him and, as a result, he indicated that he had more than that. He didn't say how much more, but my recollection was that it wasn't an awful lot more, and it was less than half of the open interest,possibly 40 per cent --

"Mr. Tuttle: Who is'he'?

"The Witness: DeAngelis.

"A My recollection was that it was around 40 per cent of the cottonseed oil futures.

"And he also said that he was long some soybean oil futures, too.

"Q Did he indicate how much?

"A No."

MS. MEIBURGER: Continuing.

"Q Do you recall if you asked him how many cottonseed oil contracts he hwas long and how many soybean oil contracts he was long?

elr "Berg [2151]

"A I don't believe I asked for specific numbers. I just told him that I knew that he had a large position and then he went into this discussion of what he needed it for.

"Q Am I correct then that there was no mention of the size of Allied's position in your meeting with Mr. Stevens?

"A I doubt it.

"Q Mr. Berg, during your meeting with Mr. Stevens was there any mention as to the amount of inventory of fats and oils which DeAngelis had, or Allied?

"A I don't recall any."

elrf 3b am 1 "Berg" [2152]

"Q Was there any mention of that fact in your conversation with Mr. DeAngelis?

"A In this sense: When he explained the type of marketing operation that he was going through, he said that he had to be a continual buyer of oil, he had to have stocks of fats and oils to fulfil his commitments or his manufacturing needs. I don't recall quantities by numbers being mentioned. It was just that they were large quantities.

"Q As I recall it, you didn't ask him for the quantities.

"A Not in numbers.

"Q Mr. Berg, in your meeting, first meeting with Mr. Stevens, was there any discussion as to the extent of contracts which were had by Allied for fats and oils?

"A I doubt it.

"Q There I mean contracts actually consummated.

"A I don't recall whether there was or not, except we didn't discuss the financing of the export contracts.

"Q Mr. Berg, was there any discussion of that in your conversation with Mr. DeAngelis, that is, the actual amount of sales of fats and oils which Allied had?

"A In numbers?

elrf 2 "Berg" [2153]

"Q Yes, in numbers.

"A No, just large quantities.

"Q And you didn't ask him for any numbers?

"A No.

"Q Mr. Berg, in your initial meeting with Mr. Stevens was there any discussion of the amount of anticipated business"-- I'm sorry " -- business that DeAngelis anticipated in fats and oils?

"A I don't recall any.

"Q Was there any discussion of that in your conversation with Mr. DeAngelis?

"A Oh, yes. He intended to continue shipping a large amount of vegetable oil, large quantities. He talked about big deals. He thought he had a big deal pending, and I assumed that this was the potential buying of vegetable oils by the Russians.

"Q You said he indicated that he had a big deal pending?

"A That is the impression that I got out of his discussion.

"Q But I gather that he didn't identify that deal?

"A I don't believe he mentioned the specific trade.

"Q Mr. Berg, in your conversation with Mr. DeAngelis, did you inquire as to in numbers the extent

elrf 3 "Berg" 2154

of the business which Mr. DeAngelis anticipated in fats and oils?

"A No.

"Q And he didn't --" there is some colloquy there where it is clarified that the reference to numbers refers to pounds.

"A No.

"Q And he didn't mention it?

"A No.

"Q Mr. Berg, in your meeting with Mr. DeAngelis was there any discussion of the historical volume of sales by Allied or DeAngelis of fats and oils?

"A Just in the sense that he had been for a number of years the biggest shipper, and the United States was, oh, from, well, from about, oh, 1954, I guess or maybe 1955, the United States had become the owner of substantial quantities of cottonseed oil under a program which was stated to be for the purpose of supporting cottonseed, but which in effect resulted in the Government taking over large quantities of cottonseed oil and in the process holding an umbrella over the price of other fats and oils.

"Q Mr. Berg --

"A These large stocks of oil were quite a burden

elrf 4 "Berg" [2155]

to the Government. They incurred storage charges, interest charges, and the risk of deterioration in quality, the risk of disappearance so far as weight is concerned, and the United States started selling and shipping vegetable oils.

"And from that point onwards, the amount of total fats and oils which -- of which vegetable oils were a large proportion -- kept increasing, and DeAngelis pointed out that his volume had been increased with the increased exports and that he was the largest shipper.

"Now, no numbers.

"Q No numbers?

"A No.

"Q And you didn't ask for any?

"A No.

BY MS. KAYE:

"Q Mr. Berg, subsequent to your meeting with Mr. Stevens and your meeting with Mr. DeAngelis did you have any, did you have any opinion as to whether or not DeAngelis' contracts on the cottonseed oil futures were hedges?

"A I thought they were. Mr. DeAngelis was a very convincing man, I might add."

elrf 5 "Berg" 2156

THE COURT: For your information, page 378 in the original is missing from this deposition. All right.

BY MS. MEIBURGER:

"Q Mr. Berg, did you ever during 1963 --"

THE COURT: Where are we now?

MS. MEIBURGER: We are still on page 378, your Honor. Te bottom of the page.

"Q Mr. Berg, did you ever, during 1963, visit Allied's facilities at Bayonne?

"A No.

"Q Mr. Berg, did you --

"A There was a -- this is a touch of humor here-- I don't care. Let me state it and I will repeat it if necessary.

"There was a visit planned for the afternoon of November 15th, to which I was invited, along with a number of other people on the floor. It was cancelled, with no stated reason given at the time.

"Q You say there was a visit planned?

"A Yes.

"Q Do you recall the circumstances of how that came about?

"A I think one of the floor brokers had arranged it with one of Allied's people.

elrf 6 "Berg" [2157]

"Q Do you recall what the purpose or nature of the visit was to be?

"A Well, Mr. DeAngelis was reputed to be very proud of his facilities over there, and his staff wanted to show them off.

"Q I take it that this wasn't something that you requested?

"A No.

"Q That is, not in an official capacity?

"A No. I was just invited.

MS. KAYE: Page 385, line 5:

"Q One other thing, Mr. Berg: I think you said subsequent to your meeting with Mr. DeAngelis that you thought his position, futures position, was a hedge; correct?

"A I did.

"Q And that was on the basis of what Mr. DeAngelis had told you; is that correct?

"A And Mr. Stevens, and what we knew about his overall operations."

Page 387, line 15:

"Q Mr. Berg, during your conversation with Mr. Stevens, did you discuss any limit or suggest that Haupt limit the number of contracts that it would carry for

elrf 7 "Berg" [2158]

Allied?

"A I don't believe I did.

"Q Mr. Stevens' whole attitude was to the point that he was right on top of this whole business. He was watching everything very closely, and he knew what he was doing.

"At that point in time, from what I knew, I don't think I would have suggested that he put a limit on the position. That is sort of trying to tell a man how to run his own business."

MS, MEIBURGER: Page 388, line 17:

"Q Mr. Berg, at your initial meeting with Mr. Stevens, were any documents or papers relating to the Allied account exhibited to you by Mr. Stevens?

"A Well --

"Q I am sorry. Make that the Allied account or Allied's relationship with Haupt.

"A I don't recall any.

"Q Did you request to examine any documentary material?

"A No."

MS. MEIBURGER: Page 390, line 5:

"Q Mr. Berg, do you recall to whom, if anyone, you reported your conversation with Mr. Stevens?

elrf 8 "Berg" [2159]

"A To Mr. MacDonald.

"Q Was he the only one, to your recollection?

"A I am not sure. I may have, at a subsequent date, mentioned it to Harry Anderson, who was chairman of the Cottonseed Products Committee. But I can't remember.

"I am sure that I told it to no one else.

"Q Mr. Berg, do you recall --

"A Mr. Goldfogle knew that I was there. That is obvious.

"Q Do you recall when you reported it to Mr. MacDonald? Was it shortly following the meeting?

"A It was the same day or the following day.

"Q Do you recall what you told him?

"A I told him everything. I gave him a complete report of the meeting, which was probably a lot more complete than we have got here today because it was current."

Page 391, line 8:

"Q Mr. Berg, do you recall if Mr. MacDonald asked you to do anything, take any action, subsequent to your report to him of your conversation with Mr. Stevens?

"A You mean in respect to Haupt?

"Q Or Allied.

elrf 9 "Berg" [2160]

"A Well, sometime after that Mr. MacDonald suggested that we had better see if we can have a talk with DeAngelis, but that was -- but I don't think that arose out of our conversations with Stevens.

"Q Was that the suggestion that led to your conversation with Mr. DeAngelis?

"A That suggestion led to my telephone call to Mr. DeAngelis and his coming to see me in my office.

Page 392, line 24:

"Q Mr. Berg, I believe at one point you testified that reporting to the president was equivalent to reporting to the Board.

"A Yes.

"Q Was it your impression or understanding that information reported by you to the president was made available to the Board by the president?

"A I was sure that if either he or I had thought that a formal report should be made to the Board on anything we did, it would be done. Well, after all, the president is the president of the Exchange, and he runs it. And if he thinks a matter should be considered by the Board, it is. And if he thinks the matter shouldn't be considered by the Board, it isn't.

"Q Mr. Berg, to your knowledge, was the fact

of your conversation with Mr. Stevens or the subject matter of that conversation ever discussed at a meeting of the Board of Managers or any committee of the Exchange prior to November 14, 1963?

"A I don't think so.

"Q Mr. Berg, to your knowledge was the fact of your meeting with Mr. DeAngelis or the subject matter of that meeting ever discussed at a meeting of the Board of Managers of any committee of the Exchange prior to November 14, 1963?

"A No, I don't think so. I don't recall it having been.

"Q But I do understand that your conversation with Mr. DeAngelis was reported by you to Mr. MacDonald?

"A Yes.

"Q To anyone else, Mr. Berg?

"A Mr. Anderson.

"Q Was it reported to Mr. MacDonald shortly after your meeting with Mr. DeAngelis?

"A Yes.

"Q How about Mr. Anderson?

"A Shortly after that, I would guess."

gwrf 4a am 1 "Berg" [2162]

MS. MEIBURGER: Page 395, line 18:

"Q Mr. Berg, do you recall if Mr. MacDonald suggested any further action, further contact be made with DeAngelis subsequent to your report to him?

"A No. I had told him that Mr. DeAngelis had told me that any time I wanted to discuss anything about trading or markets, to call Jerry Gittleman, who he stated did all his oil trading for him. I told that to Mr. MacDonald. I also told him subsequently, when I had had occasion to discuss the ex-pits with Gittleman, in each instance, but I don't recall Mr. MacDonald suggesting a further discussion with Mr. DeAngelis.

"Q Do you recall if he suggested any further action of any sort on your part?

"A I don't remember.

"Q Mr. Berg, I think you had also testified that you advised Mr. MacDonald of your conversations with Bunge and Continental?

"A Yes, I did.

"Q Did you advise anyone else of those conversations?

"A I don't remember whether I told Harry Anderson of those conversations or not. I didn't tell anybody

business day of the year. Sometimes several times a day. And that would have been more particularly true in the 1960's -- the early 1960's -- when the markets were much busier than they are now.

"The same holds true for most of the floor brokers down there, at one time or another. It would be impossible for me to remember details of conversations that occurred in 1962 and 1963 on any subject.

"Q You said, certainly with the CEA you corroborated the assumption that Allied had a large long position in cottonseed oil futures contracts.

"Was that during the period subsequent to your meeting with Mr. DeAngelis and prior to November 13, 1963?

"A I talked to the CEA several times and I am not sure as to the dates of any of those conversations except when I had called them to discuss with them DeAngelis' position and ask them to furnish us with a report of ownership of all outstanding contracts, but I think I probably did have a conversation with someone in the CEA in September or October in respect to the Allied group, which was one of the times that I was told that the Commodity Exchange Authority had investigated them and found no reason to bring any charges.

"A During 1962 or 1963?

"Q Yes.

"A Or during 1963 and prior?

"Q During 1963.

"A I don't remember. I know at one point in time I had asked the CEA as to numbers and, as I recall it, what they did was indicate to me that they could not give individual positions. They were considered confidential. I don't know when that was."

MS. MEIBURGER: Continuing right along there, page 414, line 2:

"Q Mr. Berg, prior to 1963 did you in your tenure as secretary and managing director of the Exchange ever have occasion to seek from the CEA information as to positions in cottonseed oil futures contracts?

"A I think we did that in each instance, when a Control Committee was formed.

"Q Do you recall at those times if you were supplied with the information?

"A Not as to one customer or one person, but as to total open positions in excess of X numbers. We didn't ask them for ones or twos.

"Q I am sorry. You say total open positions in excess of X numbers. You mean as to all persons holding interest?

80

"A Yes.

"Q Which would indicate what each person held?

"A That's right.

"Now, the administrator is permitted under the Act to furnish Exchange officials with information of that type when -- I think it's actually the secretary's authority to do that -- when, in the opinion of the secretary, it is warranted, but I don't think they ever give out positions on just one person.

"Q And your recollection is in those instances where you had requested information as to holders of the total open position from the CEA, you were furnished with them in the past, prior to 1963?

"A Yes.

"Q Do you recall, Mr. Berg, if during 1963 and prior to November 13th, you ever requested from the CEA information showing holders of the total open position in cottonseed oil futures contracts?

"A No, I didn't. Not that I can remember, anyway.

"Q Just so I understand that, you think you might have asked for Allied's and that was refused because they are prohibited from disclosing the positions of single traders?

"A I think so.

"Q Mr. Berg, I believe you had mentioned that during the course of your conversation with Mr. DeAngelis, there was a discussion with him with respect to his reducing his overall position in cottonseed oil futures contracts as it related to the total open position.

"A Yes, and he indicated he would do so.

"Q Mr. Berg, did you request Mr. DeAngelis to do that -- reduce his position?

"A Yes, I think it arose out of the conversation and he said, first, or something to the effect that he would keep his position reduced in relationship to the total open interest before I even had an opportunity to ask him if he would do so in the interests of orderly marketing."

MS. MEIBURGER: There is some colloquy there during which one of the other attorneys says, "Incidentally, I think the witness also testified that although DeAngelis offered to reduce his position, he actually didn't do it.

"THE WITNESS: Well, we found that out afterwards.

"Q When was that, Mr. Berg? When was it that you found it out?

"A November 14th.

"Q Do I understand then that you did not during the period subsequent to your meeting with Mr. DeAngelis and prior to November 14th make any effort to determine whether or not he kept his promise to reduce his position?

"A Not that I can remember."

4B

gr1 "Berg 2171

MS. MEIBURGER: Page 423, line 8.

"Q Mr. Berg, I think you testified that Mr. DeAngelis voluntarily offered to reduce his position in relation to the open interest. That position I am referring to is cottonseed oil futures. Is that correct?

"A That is correct.

"Q And he had done so before you had an opportunity to ask him if he would do so?

"A That is right.

"Q Do I understand by that that you intended to ask him to reduce his position?

"A I had intended to ask him, not just for that moment but also for his future trading operations, to reduce his position in relation to the open interest.

"Q Did you have any figure or any percentage that you intended to request?

"A No,not really.

"At that point in time, this was more a subjective matter than it was a matter of numbers. I think I mentioned before that the exchange -- all exchanges don't want to see a position -- a person in a position, either on the long or the short side of the market, where if they have to take hasty action, it

gr2 "Berg [2172]

will result in dramatic price swings.

"And I think I also said that I had told Mr. DeAngelis that we wanted an orderly market here; we didn't want any surprises or really abrupt price swings that would not appear to be warranted by normal marketing conditions.

"His response was, that is exactly what he wanted, that he needed an orderly market in order to function.

"Q Do I understand from that, then, Mr. Berg, that it is your testimony that the reason for your intention to ask Mr. DeAngelis to reduce the size of his position in relation to the open interest was in an effort to maintain orderly marketing?

"A In an effort to avoid a condition that might result in disorderly marketing.

"Q The condition that you refer to being the necessity for liquidating the contracts in a hurry, as you put it?

"A Right.

"Q Mr. Berg, you did testify that Mr. DeAngelis said he would reduce his position in relation to the open interest.

"Did he mention any figure that he would

gr3 "Berg 2173

reduce it to as a percentage?

"A I think he said he would cut back, oh, maybe 10 per cent. But again, I am not too sure of this.

"Q Well, he would cut back 10 per cent from what he then had?

"A I didn't understand it that way. Well, yes, at the moment he would not add to his position in such a manner that if the open interest continued to increase it would actually result in about a 10 per cent reduction.

"That is the way I understood what he meant.

"I didn't expect him to go in the market and immediately sell out 10 per cent of his position.

"I think that is p etty obvious from what I have said heretofore.

"Q As I understand it, Mr. Berg, at that time Mr. DeAngelis indicated to you that his position in the cottonseed oil futures contracts was something less than 50 per cent of the open interest?

"A Yes, that is as I remember it.

"Q So, then, his representation to reduce it in the future, the way you understood it, would be that in the future his position in cottonseed oil futures

contracts would not represent more than approximately 40 per cent of the open interest?

"A In that neighborhood.

"If I sat down and thought about it, in the light that you have just explained it, that -- 35 or 40 per cent, I would say."

MS. KAYE: Page 427, line 5.

"Q Mr. Berg, I think you said you had found out later, that is, when you got the position report from CEA, that Mr. DeAngelis did not reduce his position in relation to the open interest?

"A Correct.

"Q Was that the first time you found that out?

"A Yes.

"Q Mr. Berg, during the period subsequent to your meeting with Mr. DeAngelis and prior to your receipt of the report from the Commodity Exchange Authority on November 14th, did you have any opinion as to whether or not Mr. DeAngelis was reducing his position in relation to the open interest?

"A I guess the best way I can answer that is that I didn't have any opinion that he was increasing it. It was a normal business going on and the open interest was increasing overall."

gr6 "Berg (2176)

occurred, oh, just prior to probably the business day before the last trading day in an expiring option and on the last trading day of the expiring option."

MS. MEIBURGER: Page 433, line 11.

"Q And what you were pointing out was that the exchange wanted an orderly market?

"A Right. We didn't want to see the market expire on a drastic upswing or a drastic downswing, because it doesn't look good. We have been through this before.

"Q Is this something that you told all the traders, all the floor brokers, during 1963?

"A I can answer that.

"I think that all the traders there were aware of these conversations. I didn't take them off in a corner and say this to them, but Comenzo and Fontana, Dominic Comenzo, Mike DeAngelis, they were all, from time to time, buyers. Other brokers -- and they were from time to time sellers, too --and other brokers were buyers and sellers, but Comenzo and Fontana and these other few people that I've mentioned were more often buyers than sellers.

"I didn't want to see them or anybody else, as far as that goes, bit the market way up."

gr7 "Berg 2177

MS. MEIBURGER: Page 437, line 11.

MS. KAYE: To follow that up.

"Mr. Shealy: Or to knock it way down.

"The Witness: Or to knock it way down -- either way.

"A I think everybody around the ring probably heard one or more of these conversations.

"Q Mr. Berg, the particular conversations that you had reference to, do you recall if they occurred throughout 1963 or at any specific time prior to November 14th?

"A I think they occurred in October and September and proba-ly one or more of the preceding months -- trading months; that would be March, May and July, but I can't be sure how many."

MS. KAYE: Page 436, line 13.

"Q Mr. Berg, did you have any knowledge or information during 1963 and prior to November 14th, as to whether or not the trades executed by Comenzo or Fontana or Michael DeAngelis were generally for large number of contracts?

"A I don't think I can generalize. Buying sometimes and the selling, as well, of course, would be in small quantities and sometimes it would be in large

gr8 "Berg [2178]

quantities.

"Q Mr. Berg, do you recall if during 1963 and prior to November 14th, Michael DeAngelis or Comenzo or Goldberg or Fontana executed their orders at any particular time of the day as opposed to any other time of the day?

"A That would be a hard one for me to answer, because I am not on the floor all the time.

"Q Did you ever hear during 1963, Mr. Berg, and prior to NOvember 14th, that Michael DeAngelis or Comenzo or Fontana or Goldfogle either entered large orders near the close of trading or executed a greater portion of their orders near the close of trading?

"A Let me answer it this way, and I can't be specific in time in 1963.

"I might have heard something along the lines of the following:

"Well, it looks like Allied is buying at the close; basis an assumption that they were covering a PL480 sale.

"Now, everyone in the business would know what PL480 business was pending, what authorizations had been issued and what country was in the market.

gr9 "Berg 2179

"So, in that sense, yes, I had heard at one time or another that Comenzo or Fontana was buying at the close.

"Now, I can't answer it as to quantity.

"Q Mr. Berg, you say basis an assumption that it was covering a PL480 sale?

"Can you explain that for me? Do you mean that the buying was to cover a sale that had been made?

"A Yes.

"Q And this was the explanation as to, or the reason given as for the buying wasto cover a sale that had been made?

"A Yes.

"Q And this was the explanation as to, or the reason given as for the buying at the close?

"A That's right."

THE COURT: All right. We will take ten minutes.

(Recess)

5A elr1 "Berg [2180]

(In open court; jury present)

MS. KAYE: Page 438, line 14.

"Q During 1963 and prior to November 14th, was there ever a discussion in which you participated as to why the buying came at the close in connection with the PL480 sale as opposed to another time of day?

"A I don't think so. It is a pretty normal occurrence for trades to be made, basis the price at the close. This was something I wouldn't sit down and discuss with anybody. I knew it.

"Q I think I misunderstood you.

"When you said it looks like Allied buying at the close, basis an assumption that it was covering a PL480 sale, I understand that you meant by that that there had been a PL480 sale entered into at which the price was to be determined by the closing price.

"A Yes. Basis the futures price at the close on a date certain.

"Q Mr. Berg, during 1963, and prior to November 14th, didyou ever hear or did anyone ever suggest to you that Comenzo or Fontana or Goldfogle or Michael DeAngelis was buying at the close for the purpose of increasing the settlement prices of cottonseed oil

elr3 "Berg [2182]

"Q Time of year? Was it late 1963 or early 1963, middle 1963?

"A I can give you a guess -- sometime between July and October, but it is a guess."

MS. KAYE: Page 441, line 15.

"Q To your recollection, did the situation ever occur during 1963, prior to November 14th, where there was a price swing which you considered unnecessary or undesirable on the last trading day?

"A I can't recall any."

MS. MEIBURGER: Page 443, line 7.

"Q Do I understand, then, that there was nothing specific or particular which occasioned your reminding Mr. Comenzo that you wanted to avoid an upsurge in buying or selling which would result in unnecessary and undesirable price swings?

"A I think I described why I spoke to him.

"I think it was in view of all of the factors that were occurring.

"Q You say all the factors -- you mean the fact that the market was active and there was a large volume of trading and there had been no drastic price changes?

"A Plus that, as I think I said, I thought

elrf 2 "Berg" 2186

"Q I believe that you mentioned the other day that you had another discussion with Mr. Stevens and Goldfogle subsequent to your initial meeting with them in September of 1963, and that this later meeting coincided with the time of the announcement of the increase in margin requirements in the Clearing Association, which was October --

"A 10th, I think you said.

"Q 10th of 1963, is that correct?

"A Yes.

"Q Mr. Berg, can you recall where that discussion took place?

"A In my office.

"Q Do you recall who was present?

"A Mr. Stevens, Mr. Goldfogle. Possibly Mr. Winheim, but I don't remember.

"Q Did you request Mr. Stevens to come to your office?

"A No.

"Q Did you ask for the meeting?

"A No.

"Q Can you recall the circumstances under which the meeting came about?

"A Yes. Mr. Stevens and Mr. Goldfogle came

elrf 3 "Berg" [2187]

into the office and Mr. Stevens made mention of the fact that the Clearing Association had introduced a scale-up system of margin requirements. Mr. Stevens represented that he thought this was unreasonable and unfair; he didn't think it was warranted, and he was complaining about it.

"Portions of the conversation thereafter -- well, let me backtrack a bit.

"The net result of the discussions about the scale-up was that I told him I thought that the Clearing Association was the best judge of the type of margins needed, and that if he had a complaint he should talk to the Clearing Association; that these were their requirements. I checked with him again at that time as to whether the Allied account was being handled properly, was he still getting his margin calls, was he still requiring margin, and was he still getting his margin calls answered promptly.

"I asked him how much per contract was he getting also. He said he was getting $600,000. He confirmed that the account was being handled properly; that the margin calls were met. He showed no concern whatsoever. I asked him again if he was sure he knew what he was doing, that this was a volatile commodity

elrf 4 "Berg" [2188]

that he was handling. He again told me that he was very sure he knew what he was doing. He just didn't like the idea of putting up any more money. I guess they were in the office 10 or 15 minutes, maybe a little more than that, after which they left the office with Mr. Goldfogle, telling me that they were going over to see the Clearing Association. That is about it, I guess."

MS. KAYE:

"Q Mr. Berg, subsequent to your meeting that you just referred to with Stevens and Goldfogle, did there come a time when you learned whether or not Stevens and Goldfogle had gone to see someone at the Clearing Association? This is prior to November 14, 1963.

"A Yes, I did.

"Q You did learn?

"A Yes.

"Q Do you recall when you learned, sir?

"A No. A few days thereafter, I would imagine. Possibly the next day. And I believe I learned it from Mr. Goldfogle.

"Q That they had gone to see the Clearing --

"A That they had gone to see the president of the Clearing Association.

elrf 5 "Berg" 2189

"Q Do you recall who that was at the time, sir?

"A Mr. Weinstein.

"Q And did Mr. Goldfogle tell you what had been discussed with the Association?

"A Yes, he did in general. This is secondhand, now, and I don't know if I can remember exactly what Mr. Goldfogle told me.

"But as I recall it, Mr. Weinstein asked Mr. Stevens much of the same information that I had asked and discussed with Stevens; Haupt's position in the clearing house, pointed out to him the amount of money involved, if the market moved its two cents range in one day.

"As I recall it, Milton said that he showed him -- Milton said that he showed him, got out a pencil and paper and showed him the amount of dollars that would be involved. I don't think I can remember anything more of what he told me.

"Q Did you participate during 1963 and prior to November 14th in any discussions with representatives of the Clearing Association regarding an increase in original margin requirements of the Association?

"A Yes.

"Q Do you recall when that was, sir?

"A Late September, I believe."

"A I don't really remember the details of that. He was complaining about it and I think his feeling was that the increase per contract was too much but -- I guess that's about as good an answer as I can give.

"Q You don't, then, recall precisely the nature of his complaint, other than it was too much money?

"A That's about the best I can recall now.

"Q I believe you also mentioned that at that meeting you checked with Mr. Stevens again as to whether the Allied account was being handled properly, whether he was still getting his margin calls, was still requiring margin, and whether the margin calls were being met promptly; that Mr. Stevens confirmed that the account was being handled properly, that all margin calls were met, and that he didn't show any concern.

"Do you recall, was there any particular occurrence or event which led you to inquire again of Mr. Stevens as to whether the account was being handled properly or was it --

"A Just the fact that he was there.

"Q Was there any discussion, to your recollection, Mr. Berg, of the manner in which margin calls were being met?

"That is to say, at this time, whether cash

was being deposited by DeAngelis or whether product margin was being accepted then?

"A No.

"Q I believe you also mentioned that you asked him at that time, that is, the second meeting, how much margin per contract he was getting, and Mr. Stevens said $600?

"A I asked him if he was still getting 500 per contract and he said no, that he had boosted it to 600, as I recall.

"Q Was there any particular reason for your asking Mr. Stevens as to the amount of margins he was getting or again was it just in the nature of a general information?

"A Well, I had started this inquiry while he was there and I just sort of repeated what I had asked him at the previous meeting.

"Q Do you recall, Mr. Berg, if Mr. Stevens indicated to you why he was getting 600 per contract, why he had raised it to 600?

"A No.

"Q Did Mr. Stevens' indication that he was getting $600 per contract lead you to make any conclusion as to whether Allied's position at that point was larger than it had been at the time of your first meeting with

further, on your part.

"Mr. Berg, do you recall if the conversation with Mr. Stevens, the second one, that is, was discussed or referred to at any meeting of the Board of Managers of the Produce Exchange, to your knowledge, prior to November 14, 1963?

"A No."

MS. MEIBURGER:

"Q Mr. Berg, subsequent to your meeting with Mr. Stevens in October of 1963, did you make any effort or take any steps to determine or verify Mr. Stevens' statement concerning the amount of margin that he was requiring of Allied?

"A No."

MS. MEIBURGER: Page 488, line 19:

"Q Mr. Berg, I believe that you also testified previously that subsequent to your meeting with Mr. DeAngelis, you made several inquiries of Mr. Gittleman; is that correct?

"A That is correct.

"Q Do you recall how many such inquiries you made?

"A No.

"Q Ten such inquiries or was it less, to your knowledge?

"A Probably less.

"Q Would you recall when such inquiries were made?

"A I think they were all made because of ex-pits reported.

"Q Do you recall, then, would the substance of those conversations all have related to ex-pits, to your knowledge?

"A I think so. I can't think of any other reason why I would have called him.

"Q Do you recall if there was any particular ex-pit which you inquired of Mr Gittleman?

"A I probably inquired of him when any ex-pit of size occurred.

"Q When you say size, Mr. Berg, of any measure, standard?

"A Over -- I am trying to remember now and I may not be too accurate -- over forty or fifty lots.

"Q Do you recall if there were a number of such ex-pits between the time subsequent to your meeting with Mr. DeAngelis and prior to November 14, 1963?

"A I know I talked to them several times. There were several.

"Q Do you remember, did you seek any information from Mr. Gittleman with respect to those ex-pits, Mr.

Berg?

"A What I was trying to do was to corroborate what the commission house would have already reported to me; that is, whether it was no change of ownership or whether it was against cash or an exchange for cash and he would respond, say, yes, we bought some oil from so and so or we sold some oil to so and so.

"Q And do you recall if you made any further inquiry with respect to what Mr. Gittleman represented?

"A In most of these instances, in or about that period, we would get written confirmations and as long as all this fit, there was no occasion to make any further inquiries.

"Q Written confirmations -- that is, from Haupt?

"A From the clearing members involved. Not just Haupt, but from all the others who were involved as well.

"Q You mean the other side of the transaction?

"A Yes."

MS. MEIBURGER: Page 492, line 14:

"Q Now, did you check with the customer of the clearing member on the other side of the transaction to corroborate what that clearing member had reported?

rules.

"Q Well, just so I understand, isn't that something which would be reflected by the confirmation that the clearing member would submit to you?

"A Yes. But these confirmations don't all come in at the same time, and if I got one in, I might call the other side. I have done that -- inquired if it matched up before their confirmation would come in.

"Q In connection with the ex-pits, Mr. Berg, do I understand that your contacts with Mr. Gittleman were to corroborate the information that Allied's clearing member had reported in connection with an ex-pit transaction executed for Allied?

"A Yes, and he usually told me who the trade was made with.

"Q When you say who the trade was made with, you mean the other side?

"A If it was Bunge, it would be Bunge. If it was Proctor & Gamble, it would be Proctor & Gamble.

"Q And I think I asked whether you would check the person with whom the trade was made to corroborate anything which that person's clearing member had reported and you had said it wasn't necessary to do so.

"A That is right.

"Q And I think I had also asked whether you

gwrf 11 "Berg" [2200]

checked with either clearing members or customers of clearing members engaging in ex-pits not with Allied.

"A Yes.

"Q In the regular course.

"A Yes, clearing members. Normally, not with customers.

"Q Was there any reason why you felt it necessary to check with Mr. Gittleman to corroborate with Haupt what Haupt had reported with respect to ex-pits?

"A Well, Mr. DeAngelis had suggested that I do, so I did so.

"Q He suggested this --was this at your meeting with him?

"A Yes.

"Q And he suggested that you check ex-pit trades with Mr. Gittleman?

"A No. Anything that I wanted to discuss, including the ex-pits.

"Q Mr. Berg, do you recall if in your conversations with Mr. Gittleman you ever discussed the reason for the ex-pit?

"A I think in each instance I did.

"Q Well, let me just clarify that.

"By 'reason', do I understand and you understand

it to mean whether it was a change of ownership or an exchange for physicals?

"A Yes.

"Q Anything else? That is to say, you know, did you discuss why Allied engaged in the ex-pit?

"A Well, in the course of their business, they were buying and selling fats and oils and that was the reason. Cash against futures is normal to the operation of a business.

"Q Mr. Berg, during your conversations with Mr. Gittleman, did he ever indicate to you that Allied had engaged in an ex-pit transaction in order to transfer a position in futures from a near month to a deferred month?

"A I don't think so. There was one instance where, and I don't remember which one this was now, they had a trade with Peters, where it resulted in a change of position on Allied's part, and I think it had to do with -- I am not just sure about this now, because, as I have said before, this is a long time ago -- but as I recall it, it had to do with the deferred delivery; that is, they had entered into a trade to ship some oil and instead of it being consummated at the time it was supposed to have been consummated, it was to be deferred.

gwrf 13 "Berg" [2202]

"I believe in that instance, Gittleman told me that they didn't want to carry the warehouse receipts, but they did want to maintain their long position, so they ex-pitted them back to Peters and he made it pretty clear to me that this was one of their means of financing that they could carry futures contracts on margin cheaper than they could carry warehouse receipts.

"Q Mr. Berg, to your knowledge, during 1963 and prior to November 14th did Haupt regularly and promptly send in reports of ex-pit transactions that it had effected?

"A Regularly, yes. I can't recall how promptly. "Some clearing members are much quicker in confirming in writing than others are.

"Q Do you recall if during 1963 and prior to November 14th, you ever had occasion to check with anyone at Haupt regarding ex-pit transactions in which it had been engaged?

"A In this sense: When the report was made to me, made to my office -- I didn't necessarily get all of them -- if I got the call I would frequently say, well, send along a copy of the sales contract or whatever is involved or I might call them back, if someone else had taken the call, and ask who was the trade with and

please send us a copy. But that is about as far as it went, yes.

"Q You said when you got the report. Were you referring to an oral report?

"A Telephone report.

"Q Was it a requirement in 1963 that the clearing member report by telephone the execution of an ex-pit?

"A Yes.

"Q And confirm it later in writing?

"A Yes."

gr3 "Berg 2206

that it is cheaper to own futures than it is to own warehouse receipts.

"You don't have to use as much money.

"Q When you say one of the methods of financing, do you mean by that that ex-pits were one of the methods of financing?

"A No. No. Not having to carry warehouse receipts, carrying futures instead, is a cheaper means of operating, to use less money, than owning the warehouse receipts, hocking them in a bank and get, what, 75 per cent, maybe, of the face value of the warehouse receipt and having to pay storage charges as well."

BY MS. MEIBURGER:

"Q Mr. Berg, do you recall if any of your inquiries of Mr. Gittleman, during 1963 and prior to November 14th, were initiated at the request of the president of the exchange or was this something that you did on your own?

"A I don't remember whether he asked me to do it or whether I told him I was doing it in the process of screening each of these ex-pits.

"It doesn't make any difference -- he was aware of it because I discussed any ex-pit of any size

gr4 "Berg [2207]

with him. I reported it to him.

"Q You reported it to him, you say.

"You reported the consummation of the ex-pit and what was involved?

"A Yes.

"Q Do you recall if there was any instance, Mr. Berg, when the president asked you to make any further inquiry with respect to an ex-pit that you had reported to him, prior to November 14, 1963?

"A I don't recall that I did."

MS. MEIBURGER: Page 502, line 24.

"Q Mr. Berg, do you recall during 1963 whether the fact that an ex-pit trade had been consummated, would be posted on the exchange at the time of the telephone report of the trade or only when the trades were confirmed?

"A When the phone report is made."

MS. KAYE: Page 503, line 2.

"Q During 1963, to your knowledge, did the exchange make any report of transactions to the Commodity Exchange Authority?

"Transactions consummated on the exchange in cottonseed oil futures contracts.

"A No. That would sort of be gilding the

gr8 "Berg [2211]

over sums which paid by clearing members to the clearing association in respect of original or variation margin?

"A No."

MS. MEIBURGER: Page 517, line 3.

"Q Mr. Berg, I believe you had also previously referred to a conversation on November 13, 1963, with Mr. Anderson, Mr. Klein and Mr. Forti.

"Can you recall the circumstances of that conversation?

"A I think Mr. Anderson called me to find out if I was in my office and would be there; that he and Walter Klein wanted to come over and see me, which they did, with Mr. Forti.

"Mr. Anderson stated that he had asked some of his personnel in Chicago to try and ascertain how big Allied's position was overall -- that's futures and cash combined -- from their various sources in the trade, both trade houses and brokers.

"If I remember correctly, Mr. Anderson said in effect that his people had estimated that Allied had well over half of the open interest in cottonseed oil and probably as many contracts of soybean oil futures and owned a large quantity of cash fats and oils.

gr9 "Berg 2212

"He didn't give any numbers but he indicated that his people thought that it was a very large amount of cash, and he and Mr. Klein and Mr. Forti and I discussed these possibilities, and both Mr. Klein and Mr. Forti were asked how much they thought Allied owned and they indicated they didn't think that he owned nearly as much, either futures or cash, as Harry Anderson's people did.

"However, everyone there thought it would be a good idea to check farther, particularly as related to our own cottonseed oil futures market, and we decided that the best thing would be to go directly to the administrator of the Commodity Exchange Authority, tell him the net of these discussions and ask him if he would give us a position report.

"Either at that time or immediately after they left my office, which I believe was sometime well after the close, I reported these circumstances to Mr. MacDonald and told him that I was going to call Alex Caldwell, which I did, and told him what I have just related here, and asked him if he would let us have a report.

"He said he would look into it and would be back to me on it.

gr10 "Berg [2213]

"Now, I think it was the next morning that he called me back and told me that Allied's long position in cottonseed oil futures market holding in excess of 100 contracts.

"That report was delivered to me on the 14th."

MS. MEIBURGER: Page 521, line 14.

"Q Did, to your recollectin, Mr. Anderson indicate to you whether or not he had been discussing Allied's activities or the size of its position, of the position, Allied's, with Mr. Klein and Mr. Forti?

"A Oh, yes, he had been.

"Q He had been?

"A Prior to their arrival at my office.

"Q And did Mr. Anderson indicate to you what had prompted his discussion with Mr. Klein and Mr. Forti as to the size of Allied's position?

"A As a result of the reports from his staff.

"Q Did Mr. Anderson indicate to you why he had discussed it with Mr. Klein and Mr. Forti?

"A I don't remember. I have an assumption, but I don't remember.

"Q Did you have an assumption then?

"A I think so.

elr "Berg [2223]

my associate, Mr. Winheim."

MS. MEIBURGER: Page 562, line 5.

"Q Mr. Berg, I think you mentioned that you reported it to the president.

"Do you recall what you reported to the president?

"A I reported to the president that the report received by the CEA showed the positions of all persons in the market holding 100 or more contracts of cottonseed oil futures and that it did in fact reflect that Allied held about 90 per cent of the total open interest.

"I am sure he said, what does the other side look like and I am sure I answered, all trade shorts.

"Q I am sorry. Would you explain that?

"A Yes. If you look at the positions, you have to look at both the long and short side.

"Since DeAngelis held most of the long side. it is a necessity to also note who is on the short side and as you can see by these names here, they are pratically all shorts who are in the cottonseed oil trade, either in the business of manufacturing a product, dealing in a commodity or, such as the exporters, the speculative interest was very small.

"Q On the short side?

elr "Berg [2224]

"A On either side. Both sides.

"Q Mr. Berg, you said that you indicated to the president that the report from the CEA showed that Allied held 90 per cent of the total open interest.

"Did you at any time during the period November 14th through and including November 20th, indicate that to any other official of the exchange or member of the board of managers?

"A Yes. I told Harry Anderson.

"Q Do you recall when that was, sir?

"A I think that probably was the morning of the 14th."

MS. KAYE: Page 565, line 23.

"Q Mr. Berg, do you recall if you told anyone else other than Mr. MacDonald and Mr. Anderson the information which had been supplied to you regarding Allied's position by Mr. Caldwell, either in the telephone conversation or the information contained in the report, the written report?

"A I don't recall. I don't recall telling anyone else.

"Q Do you recall whether or not you ever made that information available to Mr. Walter Klein during the period November 14 to November 20, 1963?

elr "Berg [2225]

"A I don't recall doing so.

"Q Or Mr. Forti?

"A November 20th?

"Q Yes.

"Mr. Shealy: Prior to November 20th.

"A I think Forti learned about it on the 19th.

"Mr. Klein, I believe, would have been at that meeting, but he was out of town.

"Q What meeting was that, that you refer to?

"A The joint meeting between the executive committee of the exchange and the board of directors of the clearing association on the 19th.

"Q You say Mr. Forti learned about it, I think, on the 19th.

"Do you have reference to that meeting?

"A I do.

"Q Mr. Berg, do you recallwhat information was disclosed at that meeting?

"This is regarding the holders of the open position in cottonseed oil futures contract.

"A I believe just the fact that DeAngelis had this large position.

"Q Was there any discussion or indication of who held the short position, do you recall?

9b am elrf 1 "Berg" 2227

MS. KAYE: Page 575, line 5:

"Q Mr. Berg, do you recall if there was any suggestion made in that conversation by the CEA representative with whom you spoke regarding the settling of contracts on the Exchange?

"A I don't think so.

"Q Mr. Berg, do you recall if you indicated to the CEA representative in that conversation -- that is, the 14th or the 15th -- the reasons for the appointment of a Control Committee by the Exchange?

"A I don't think so. I don't think there was any need to discuss that. I don't recall a discussion surrounding that."

MS. MEIBURGER: Page 583, line 24:

"Q Was it your understanding as a member of the Control Committee that it was part of the Control Committee's responsibility to determine if there were a group willing to take over Allied's position?

"A I thought it might become a possibility, yes.

"Q Did you as a member of the Control Committee take any steps in that direction prior to November 20, 1963?

"A Not to my knowledge.

elrf 3 "Berg" [2229]

Did you discuss at any time during the period November 14th through November 20th -- did you discuss this at any time from November 14th up to the meeting, of November 19th?

"A Yes, I must have made some comment on Mr. MacDonald's statement at the November 14th meeting in relation to an action the Exchange could take, if it had to, with respect to the settlement of the contracts.

"Both he and I, in the course of our conversations, were in complete agreement that it was physically impossible to corner the vegetable oil market.

"There was too much oil around, and there was too much oil coming, and the last thing in the world an exchange wants to do is to settle its contracts.

"Q Mr. Berg, the Exchange did settle the contracts on November 20,1963, is that correct?

"A It did.

"Q Can you tell me what occurred between the period November 14 and November 20, 1963 that led to the settlement of the contracts?

"A Allied's bankruptcy and the inability of Haupt and Williston & Beane to meet any further margin calls.

"Q Was there anything else that occurred during

elrf 4 "Berg" 2230

that period that led to the settlement of the contracts, or is that it?

By that, I mean Allied's bankruptcy and Haupt's and Williston & Beane's inability to meet margin calls.

"A That, and as I have explained before, the consequences that the Board and the committees felt would arise out of such circumstance.

"Q By such circumstances, you mean the bankruptcy --

"A The bankruptcy and the inability to meet margin calls."

Page 589 line 17:

"Q And discussions with Mr. MacDonald, you indicated previously, to the effect that neither of you thought a corner could be run?

"A We thought it was impossible.

"Q You recall when you had those discussions with Mr. MacDonald?

"A Sometime between the 14th and the afternoon of the 19th. I am still of that opinion.

"Q In your conversation with Mr. Caldwell on the 18th, did you comment upon his statement regarding the settlement of contracts by the Exchange?

"A Yes, I certainly did. I indicated that the

clrf 7 "Berg" 2233

"That meant that if we had asked for all positions, clearing members would have to report one and two and three lot customers, which is quite a nuisance and serves no useful purpose when it gets down that small -- when the accounts are that small -- and might serve to delay the furnishing of the report.

"Q Did you inform the members of the Control Committee that you had received a report from the CEA showing positions of all persons in cottonseed oil futures contracts over 100?

"A I reported it to the president.

"Q Who was on the Control Committee, Mr. Berg?

"A I think ultimately, the Control Committee was the president, Mr. John Allen and me.

"Q And when it was first appointed, who did it consist of?

"Let me rephrase it.

"When you said ultimately constituted --

"A Mr. Allen was substituted for Mr. Salmanowitz, who didn't care to serve on the committee.

"Q Mr. Berg, was the decision to put out a position call, was that arrived at by the Control Committee?

"A By the Board.

elrf 8 "Berg" 2234

"Q And did you, at the meeting of the 14th, indicate to the Board that you had received a report from the CEA, showing all positions in cottonseed oil futures contracts over 100?

"A No, I did not. I told that to the president."

MS. KAYE: Just following right along:

"Q To your knowledge, did the president indicate that at the meeting of November 14th?

"A I don't believe so.

"Q Was there any discussion between yourself and the president as to whether that fact should be made known to the Board?

"A Yes.

"Q Do you recall when?

"A When I received the report and reported on it to the president, we decided then that we would ask the Board for the appointment of a Control Committee, and that in the meantime I was to lock the report up and not let it get into anyone else's hands.

"Q Do you recall why that was?

"A Yes. In the first place, it is a confidential report; it is not supposed to be seen by other than authorized people.

"In the second place, it might, if it fell into

elrf 9 "Berg" [2235]

the wrong hands -- and don't ask me what I mean by wrong, because I don't know who they might be, it might cause a very severe market reaction."

MS. MEIBURGER:

"Q Did you inquire of Mr. Caldwell or anyone else at the CEA whether they had any objection to your making the report available to the Board?

"A No, we did not.

"Q This is between the period November 14th and November 20, 1963; is that correct?

"A Right. That is as I understand it.

"Q Did Mr. Caldwell or anyone from the CEA indicate to you that the CEA had any objection to your making the report available to the Board?

"A I don't think we discussed that.

"Q So that I understand that it was yours and the president's decision not to make it available?

"A Yes, influenced by the fact that the Commodity Exchange Authority treats this information as confidential, and we know that they don't want it exposed any farther than is absolutely necessary under the conditions obtained."

MS. KAYE: Page 599, line 11:

"Q Mr. Berg, I think you said that the position

elr "Berg [2253]

"I would also say probably from 1960 through 1963, there were -- conditions were such that it made it more profitable for a refiner to deliver, and they did so.

"Q Mr. Berg, you say 1960 through 1963, conditions were such that it made it more profitable for a refiner to deliver, and they did so.

"When you say more profitable to deliver, you mean as opposed to settling the contract by purchase of an offsetting?

"A That is correct."

MS. KAYE: Page 688,

"Q During 1963 and prior to November 14th, did anyone ever express the opinion to you or did you hear that anyone expressed the opinion that the prices of cottonseed oil futures were too high in relation to the price of cash oil or, artificial?

"A I don't recall anybody stating that to me or my hearing it.

"Q During 1963 and prior to November 14th, did anyone ever express the opinion to you or had you heard that anyone expressed the opinino that prices of cottonseed oil futures contracts would decline or would have to decline because they were too high?

November 14, 1963, to determine whether or not concentration of open interest in the hands of relatively few clearing members of cottonseed oil futures contracts continued?

"A No.

MS. KAYE: Page 741, line 6:

"Q Mr. Berg, to your knowledge, was the meeting of September 23rd subject of discussion ever reported to the Board of Managers of the Exchange, or any committee of the Exchange, prior to November 14, 1963?

"A I don't believe so."

Page 756, line 2:

"Q Prior to attending the meeting, did you speak to Mr. Klein or Mr. Anderson about the purpose of the meeting -- on the 14th, this is? "

MR. SMITH: Your Honor, we haven't objected any time there was a meeting at which our client wasn't present. This is the meeting of the 14th, which is particularly important. I would request that the same limiting instructions be given, that Mr Vogel wasn't present.

THE COURT: All right.

"A I know I talked to Mr. Anderson and I am sure he was aware why the meeting was being called.

14th?

"A No, there wasn't.

"Q Do you recall if Haupt was mentioned in your conversation with Mr. MacDonald or Mr. Anderson prior to the meeting of the 14th?

"A I don't think so.

"Q Do you recall if you discussed with either Mr. MacDonald or Mr. Anderson, prior to the meeting on the 14th, the question of whether or not Haupt would be able to meet its margin calls in the event that Allied was unable to do so?

"A I doubt it. At that point none of us knew what portion of this was carried by Haupt and what portion was carried by other houses.

"Q Mr. Berg, at that time, did you have any opinion as to what portion of Allied's position was carried by Haupt?

"A I thought it was probably more than the other houses but I couldn't pinpoint it any closer than that.

"And this is in retrospect, too.

"I don't even remember whether I came to that actual conclusion at that time or not. "

Page 771:

"Q Mr. Berg, to your knowledge, in and around

3a pm gwrf 1 "Berg" [2272]

MS. MEIBURGER: Page 775, line 12:

"Q Mr. Berg, on page 2 of Plaintiff's Exhibit 12-H, the minutes of November 14, 1963, in the last paragraph on the page, the minutes reflect that you stated that there was grave concern among the officials of the Exchange, the Cottonseed Products and Soybean Oil Committee and those of the cottonseed futures trade, over the large number of open long contracts reportedly held by a concentrated interest and that it was felt that more should be known about the situation.

"Mr. Berg, with regard to your statement that there was grave concern among the officials of the Exchange, do you recall who you had reference to there?

"A Mr. MacDonald, Mr. Anderson and myself.

"Q And as I recall it, you did say no other official of the Exchange or member of the Board had expressed concern to you prior to the meeting.

"A I don't believe so.

"Q Now, Mr. Berg, how about the Cottonseed Products and Soybean Oil Committee -- was there anyone there in particular to whom your statement has reference regarding the concern?

"A Mr. Anderson.

"Q And how about the statement with respect

"Q -- which would have given them reason to change their opinion?

"A I wouldn't know that, I don't think I communicated anything to them. I don't recall doing it.

"Now, whether or not, in fact, they changed their opinion is something I wouldn't know."

MS. KAYE: Page 782, line 3:

MS. MEIBURGER: Your Honor, I inadvertently omitted some questions on page 778. I would like to cover that.

Perhaps I should read the question on page 777, line 5, again:

"Q And, Mr. Berg, did the Board to your knowledge, ever learn that it was one interest, prior to November 19, 1963?

"A No.

"Q You never reported that to the Board?

"A I did not.

"Q To your knowledge, it was not reported by Mr. MacDonald or Mr. Anderson?

"A Not that I know of.

"Q Mr. Berg, did you indicate what it was about the fact that the conce tration was large and in the hands of what you knew to be a single interest

gwrf 5 "Berg" [2276]

that was giving cause for concern?

"A You mean, did I explain all the reasons that we have discussed here?

Q Yes.

"A I did not. As I told you, nobody wanted to shake the apple tree."

MS. KAYE: Page 782, line 3:

"Q Was there any discussion at the meeting of the 14th as to whether or not the holders of the concentrated long position had effected a corner?

"A No, there wasn't, and of those members of the Board who were close to the vegetable oil trade, I don't believe that anybody thought a corner could be effected.

"Q Why isthat, sir?

"A Because there were sufficient supplies of vegetable oil and the new crop was forthcoming.

"As a matter of fact, it was under -- it was moving right at that time, in the middle of November, and -- well --

"Q So then, no one, then, expressed concern about there being a corner or a manipulation; correct?"

"A No."

MS. KAYE: Page 790, line 6:

knowledgeable about this business would realize that that would take longer.

"Q It would take longer to get the information on the positions from the Clearing Association?

"A Oh, yes, certainly.

"The Clearing Association doesn't know who the customers are. They would have to make their own position call and relate it to us.

"That is shoveling sand against the tide.

"Q The Clearing Association would know the clearing members holding positions, though?

"A Certainly. But even they would have to make a call to get gross positions, and they still wouldn't know the customers."

MS. KAYE: Page 824, line 22:

"Q Mr. Berg, to your knowledge, did Mr. Anderson serve as a member of the Control Committee?

"A No, he did not."

MS. KAYE: Page 839, line 21:

"Q Do you recall whether or not prices of cottonseed oil futures contracts on November 15th declined?

"A I believe they did decline slightly, but I would have to look at the price record.

"Q Mr. Berg, do you recall whether or not there

gr1 "Berg [2288]

MS. KAYE: Page 860, line 7.

"Q In this instance, Mr. Berg, do I understand that you did not think it would react?

"A No, I didn't.

"Q And why not, Mr. Berg?

"A I suppose principally because Mr. MacDonald, Mr. Anderson,a nd at least by implication Mr. Vogel, thought it would decline.

"Now, I might point out again here that I don't trade. I don't have a position in cottonseed oil. I am not in a position to have the type of market feel that those people have, which is gained by experience.

"So I think I would be guided by their opinions in this respect. I am trying to keep my thinking in reference to what I was thinking that day, you understand.

"Q Yes.

"A I have a real good idea why the market did decline. I think it was probably mainly due to two factors --

"The belief on the part of some people in the oil business, the fats and oil business, that Russia was in fact not going to buy fats and oils from the United

gr2 "Berg 2289

States, and the market letter that was put out by Fred Barton, which stated Ira Haupt's belief that Russia was not going to buy, and that in view of that, the advice to the account representatives was to the effect that the market should be sold, not purchased.

"But I didn't know that at the time.

"Q You say you did not know that at the time. You mean you did not know the belief that Russia was not going to buy?

"A Well, I am not too sure about that.

"I may have heard some discussion about -- concerning doubts as to whether Russia would buy on that day. I just don't remember now.

"But I know I didn't know of Fred Barton's market letter until subsequent to November 20th.

"Q Do you recall when that letter was put out?

"A I think it went out on their wires Friday morning, and the letter went out in the mail, which would mean that the Haupt offices would have had the information some time during Friday, and the customers would have had it on Monday.

"Q You mean Friday the 15th and Monday the 18th --

"A Friday the 15th and Monday the 18th.

gr9 "Berg

settle out and that both of these companies could continue doing business and we could get the market reopened again on a sound basis.

"It wasn't until it was discovered -- well, later that week or early the next week, that the oil represented by the collateral just didn't exist in great measure.

"Q Representing whose collateral?

"A Everybody that owned it, principally Haupt and Williston."

MS. KAYE: Page 890, line 18.

"Q I think you said that there was discussion of the fact that if the contracts would be settled, Haupt could be expected to draw down money from the association.

"A Yes.

"Q The clearing association?

"A Yes, and did. I think they took down three and a half million dollars."

MS. MEIBURGER: Page 896, line 7.

"Q Mr. Berg, at the meeting of November 19, 1963, do you recall if there was any discussion of the potential effect on clearing members if the market were to be left open?

elrf 8 "Berg" 2307

"Now, Mr. Berg, do you recall who the Exchange experts referred to in the minutes of November 20th were?

"A They would encompass Mr. MacDonald, Mr. Anderson, Mr. Crofton, Mr. Fashena, a member of the Exchange, Jack Place, who assisted in the calculations the previous evening at the end of the Executive Committee and Clearing Association Board meeting.

"Mr. Place was at that time a broker on the floor of the Exchange and kept price records and had them available, and he was asked to assist in the calculations.

"He didn't participate in the meeting of the discussions.

"Q Mr. Berg, did anyone else assist in the calculations other than Mr. Place?

"A I think Mr. MacDonald -- I think Mr. MacDonald, Mr. Anderson and Mr. Place mainly. Maybe, perhaps, Mr. Fashena as well.

"Q This is on the night of the 19th?

"A The night of the 19th.

elr1 "Berg 2308

BY MS. KAYE:

"Q Mr. Berg, do you recall if any of the exchange exprets indicated at the meeting of the 20th what prices they believed the market in cottonseed oil futures would have reached were it not for the 25 point limitation?

"A In numbers?

"Q Yes, sir.

"A No. Generally about the equivalent of what the soybean oil futures prices reflected.

"Q Do you mean by that the extent of the decline?

"A The extent of the decline.

"Q Same number of points, is that it?

"A Approximately.

"Q Mr. Berg, the minutes reflect that the relationship of other vegetable oil prices to cottonseed oil prices on that date was also taken into consideration in determining the settlement price.

"To your recollection, what vegetable oil prices were referred to in the minutes?

"A I think there was general recognition of the fact that cash cottonseed oil, crude oil and corn

elr2 "Berg 2309

and peanut oil had also eased, not as much, but they had also eased from the previous week.

"Q Were those the only vegetable oils that you can recall?

"A I don't recall any detailed discussion on it, but those would be the ones that would be looked at."

MS. MEIBURGER: Continuing along.

"Q Mr. Berg, do you recall if there was any discussion at the meeting of November 20th asto whether or not the closing prices of soybean oil on the 19th truly reflected conditions of supply and demand?

"A No.

"Q There was no discussion?

"A No. These people are all market wise.

"Prices in an open auction market reflect supply and demand. There is no need to discuss something like that.

"Q Mr. Berg, was there any discussion at the meeting of November 20th as to whether or not prices of soybean oil were depressed?

"A No discussion on that subject. I believe all present were aware of the recent declines."

elrf 6 "Berg" [2317]

"Q By virtue of whose membership was Ira Haupt & Co. registered as a member?

"A Up until the death of Ira Haupt, by his membership. Subsequent to his death, by Joseph Kaufman, a general partner of Ira Haupt.

"Q Do you recall that Ira Haupt died in June 1963?

"A About there, yes."

I will skip, your Honor, there were certain exhibits which have been marked in this case, as exhibits for identification, marked, and I don't think I have to read the shop book foundation for them.

THE COURT: All right.

MR. LIMAN: Page 961:

"Q Defendants' Exhibit 7-D for identification, Mr. Berg, consists of an application by Ira Haupt & Co. for registration as a member of the New York Product Exchange pursuant to Section 69 of the bylaws, is it?

"A Yes, it is.

"Q Will you tell me what date this application was filed with the Produce Exchange?

"A Shortly after October 15, 1942.

"Q As part of this application was Ira Haupt & Co. required to execute an agreement stating that

the Ira Haupt partnership and each member thereof further declares and agrees that they are and each of them is acquainted with the carter, bylaws, rules and regulations of the Exchange and hereby agrees to abide by and be bound by and subject to all of the provisions of said charter, bylaws, rules and regulations, and each of them, as they now exist and as they or any of them may be hereafter amended, added to or otherwise changed?"

I know why you didn't want to read.

"A That is correct.

"Q Did they in fact execute an agreement so stating?

"A They did.

"Q Is the page which is numbered 4 of Defendant's Exhibit 7-D for identification that exhibit executed by Ira Haupt & Co.?

"A Yes, it is.

"Q Did the New York Produce Exchange, so far as you know, ever excuse Ira Haupt & Co. from knowledge of or compliance with the rules and regulations of the Produce Exchange?

"A The Exchange did not.

"Q Did you ever state to anybody at Ira Haupt & Co. that they were excused from complying with the rules and regulations of the New York Produce Exchange?

elrf 8 "Berg" [2319]

"A No, sir.

"Q So far as you know, did anybody else on behalf of the New York Produce Exchange ever state to Ira Haupt & Co. that it was not necessary for them to comply with the rules and regulations of the Produce Exchange?

"A Not to my knowledge."

I will skip the next, down to page 964, line 20:

"Q Did there come a time when Ira Haupt, the individual, applied for membership on the New York Produce Exchange?

"A Yes, he did.

"Q Do you recall when that was?

"Are you indicating that you want to see this document?

"A May I see the application? "

The document was then marked."

"Q I had asked you when Ira Haupt became a member of the New York Produce Exchange."

Page 966, line 11:

"I show you Defendant's Exhibit 5 and ask you if that refreshes your recollection?

"A Mr. Haupt was elected to membership on July 31, 1957.

"Q Do you recall what the occasion was for his

elrf 9 "Berg" 2320

application for membership? Had Mr. Worms died?

"A I think he did.

"Q And Mr. Haupt therefore succeeded him as a member of the New York Produce Exchange?

"A That is correct.

"Q It was necessary for Mr. Haupt then to fill out a co letely new application in order to become a member of the New York Produce Exchange, is that correct?

"A That is right.

"Q In connection with that application were inquiries made by the New York Produce Exchange as to the financial condition of Ira Haupt?

"A Yes.

"Q And of Ira Haupt & Co.?

"A Yes.

"Q Do your files reflect the inquiries which you made?

"A Yes.

"Q Do your files also reflect responses which you received?

"A Yes.

"Q Looking at Defendant's Exhibit 5, that consists of the application for membership which was filed by

Mr. Haupt on July 19, 1957; is that correct?

"A That is correct.

"Q There is annexed to that a balance sheet of Ira Haupt & Co., dated May 31, 1956; is that correct?

"A That is correct.

"Q That was received by you in connection with the application of Mr. Haupt, is that correct?

Can you identify what Defendant's Exhibit 7-G for identification is?

"A It is a response from the proposer of Mr. Haupt's membership on a form provided by the Exchange, addressed to the Committee on Admissions, signed by S. R. Arias.

"Q Is this a form which you sent out to the references referred to in Mr. Haupt's membership, to determine whether he was a desirable member?

"A It is.

"Q Can you tell me what Defendant's Exhibit 7-H for identification is?

"A It is a similar form used by the second sponsor of Mr. Haupt's membership, and signed by Sidney Fashena.

"Q And Mr. Fashena was also a person of whom you inquired about Mr. Haupt's desirability; is that correct?

"A Yes.

elrf 11 "Berg" [2322]

"Q He was listed as his sponsor on Mr. Haupt's application?

"A He was."

An exhibit was then marked 7-I.

"A This is an agreement precedent to membership, a form of the Exchange, required prior to his consideration by the Committee on Admissions and by the Board of Managers.

"This is dated July 18, 1957, signed by Ira Haupt.

"Q Is this form required by you to assure that members will comply with the regulations of the Produce Exchange?

"Is this a form required by the Produce Exchange?

"A This is a form required by the Produce Exchange.

"Q If a member is unwilling to sign an agreement that he is willing to abide by the rules and regulations of the Produce Exchange, will he be accepted for membership?

"A No.

"Q In order to become a member of the New York Produce Exchange each member must sign an agreement

clrf 12 "Berg" [2323]

that he will familiarize himself with the rules and regulations of the Exchange, and that he will abide by them; is that correct?

"A That is correct.

"Q Is that also true of the conditions for membership of a partnership as a registered member of the Produce Exchange?

"A That is correct.

"Q It must also agree that it will familiarize itself with the rules and regulations of the Exchange and will abide by them?

"A That is correct.

"Q If the partnership is unwilling to enter into such an agreement, will it not be accepted as a registered member of the New York Produce Exchange?

"A That is correct.

"Q At all times when Ira Haupt enjoyed the status of a registered member of the New York Produce Exchange did it agree in writing on a form supplied by the Produce Exchange that it would remain familiar with the rules and regulations and would abide by them?

"A Yes."

gwrf 10 "Berg" [2333]

Stevens in September 1963 about the Allied account; is that correct?

"A That is correct.

"Q Did that occur after you learned of certain ex-pit transactions that Ira Haupt had engaged in?

"A It did.

"Q Who is Mr. Stevens?

"A Mr. Stevens at that time was the controller of Ira Haupt & Co. and was in charge of the Commodity Department.

"Q Where did you meet Mr. Stevens?

"A In his office.

"Q At Ira Haupt & Co.?

"A In Mr. Stevens' office at Ira Haupt & Co.

"Q Were you advised that Mr. Stevens was a certified public accountant?

"A Yes, I was.

"Q Were you also advised that Mr. Stevens had been employed by several brokerage houses that had engaged in the commodities business?

"A Yes, that was my understanding.

"Q At the time that you met with Mr. Stevens in September 1963, you explicitly warned Mr. Stevens

gwrf 11 "Berg" 2334

about the hazards of the commodities futures business; is that correct?

"A I did.

"Q And you have also testified that you told Mr. Stevens that vegetable oils can be a volatile commodity, is that correct?

"A I did.

"Q And is it also correct that you told Mr. Stevens that the price of cottonseed oil futures contracts on the Produce Exchange could be subject to rapid price changes?

"A I intimated that, yes.

"Q And did you also point out to Mr. Stevens that a change of one cent a pound on the Produce Exchange meant $600 a contract?

"A Yes, I did.

"Q And did Mr. Stevens acknowledge to you that he understood that?

"A Yes, he did. He seemed to be fully aware of the commodities futures business.

"Q Did you ask Mr. Stevens at that meeting whether he was getting adequate margin from Allied to protect Haupt against price declines?

"A Yes, I did.

gwrf 12 "Berg" 2335

"Q Did you ask him that question?

"A I asked him if he was obtaining margin and how much.

"Q What did he say to you?

"A He said he had started by obtaining $400 per contract and was raising that to $500 per contract, that he was requiring these contracts to be marked to the market, that is, each night if there was a necessity for a margin call, to bring the account to a fully margined status according to Haupt & Co.'s requirements. That call would be made.

"Q Let me understand what that meant. You said he required it to be fully marked to margin; is that what you said?

"A To market, marked to market.

"Q Marked to market?

"A Yes, marked to market.

"Q How many pounds of oil are represented by a contract on the Produce Exchange?

"A 60,000.

"Q Mr. Stevens advised you, did he not, that he was now getting $500 a contract as margin; is that correct?

"A That is correct.

gr2 "Berg

not $700."

THE COURT: I'm glad that's corrected. That was causing me some problems.

BY MR. LIMAN:

"Q The margin call would be computed by simply multiplying the price decline times the number of pounds in a contract; is that correct?

"A That is correct.

"Q So that if the price declined from eleven cents to ten cents, and it had been margined at eleven cents, the margin would be $600 or one cent against 60,000 pounds; is that correct?

"A That is right.

"Q Did you report on this conversation that you had with Mr. Stevens to the board of managers of the produce exchange?

"A No, I didn't.

"Q Did you ever report on this conversation that you had with Mr. Stevens to Mr. Vogel?

"A No, I didn't.

"Q Or to anybody connected with Continental Grain Company?

"A No.

"Q Did you ever discuss with anybody at

before.

"Q And that meant that if it marked the account to the market, that to the extent the market declined, it would have to obtain additional margin from its customers?

"A That is correct.

"Q And it had to be marked each day to the market; is that correct?

"A Daily; daily.

"Q When Mr. Stevens -ame to you in October, he complained, did he not, that the scaleup margin would affect Haupt?

"A Yes.

"Q What did you say to him?

"A I told him in substance that he was really talking to the wrong person, that the scaleup was a clearing association requirement, that it was fixed by the claring association and thathe should direct his inquiries to the clearing association.

"Q During the period between the time of the annou[illegible]ment of the scaleup and the time thatit was to take ef[illegible] was Ira Haupt free to ask Allied to shift all or part of its position to other members?

"A Certainly.

gr7 "Berg [2343]

"Q Was Ira Haupt free to ask Allied to reduce its position?

"A Certainly.

"Q Was Ira Haupt free to refuse to accept certain additional business from Allied?

"A Certainly.

"Q And under the scaleup margin, to the extent that it increased the position which it was holding, that would mean that Ira Haupt would have to post additional margin; is that correct?

"A That is correct.

"Q Did anybody from Ira Haupt ever tell you that Ira Haupt had tried to shift all or part of the Allied account to other members?

"A No.

"Q Did anybody ever tell you that they had any difficulty in trying to shift all or part of the account to other brokers?

"A No.

"Q In fact, if the Allied account had been divided among a number of brokers, then the commissions would be earned by a number of brokers; is that correct?

"A That is correct.

gr8 "Berg 2344

"Q And to the extent that Ira Haupt did most of the business for the Allied account, Ira Haupt would earn more commissions than if it divided the business; is that correct?

"A That is correct.

"Q By the same token, it would mean that additional margin would have to be posted if the business were concentrated at Ira Haupt; is that correct?

"A That is right.

"Q To this day, has anybody told you that Ira Haupt ever suggested to Allied that it ought to divide its business in order to obtain a reduced margin?

"A No.

"Q At the October meeting with Mr. Stevens, when you discussed the scaleup margin, did Mr. Stevens again tell you at that meeting that he was satisfied with the Allied account?

"A I asked him if he was still obtaining margins and were the calls being met, and he said they were, that he was still obtaining the margin, that he increased it some, and that he had had no trouble with the account.

"Q Did you ever report on the conversation

which you had with Mr. Stevens about the scaleup margin to the board of the produce exchange?

"A No, I didn't.

"Q Did you ever report on that conversation to Mr. Vogel?

"A No, I didn't.

"Q Or to anybody else connected with Continental Grain Company?

"A No.

"Q You also testified that you had a meeting with Mr. Anthony DeAngelis in September 1963; is that correct?

"A I did.

"Q At that time Mr. DeAngelis told you that his position was a hedged one; is that correct?

"A He did.

"Q At that meeting did Mr. DeAngelis indicate to you that he intended to reduce his open position, that is, his share of the open position on the market?

"A Yes, he did.

"Q Did you ever report this converstaion with Mr. DeAngelis to the board of managers of the produce exchange?

"A No, just to the presi-ent.

gr9 "Berg [2345]

which you had with Mr. Stevens about the scaleup margin to the board of the produce exchange?

"A No, I didn't.

"Q Did you ever report on that conversation to Mr. Vogel?

"A No, I didn't.

"Q Or to anybody else connected with Continental Grain Company?

"A No.

"Q You also testified that you had a meeting with Mr. Anthony DeAngelis in September 1963; is that correct?

"A I did.

"Q At that time Mr. DeAngelis told you that his position was a hedged one; is that correct?

"A He did.

"Q At that meeting did Mr. DeAngelis indicate to you that he intended to reduce his open position, that is, his share of the open position on the market?

"A Yes, he did.

"Q Did you ever report this converstaion with Mr. DeAngelis to the board of managers of the produce exchange?

"A No, just to the presi-ent.

grl0 "Berg [2346]

"Q Who was the president?

"A Donald MacDonald.

"Q Did youever report this conversation with Mr. DeAngelis to Mr. Vogel?

"A No.

"Q Did you ever report this conversation with Mr. DeAngelis to anybody at Continental Grain?

"A No.

"Q You also testified that you attended a meeting with representatives of the clearing association on September 23, 1963. Do you recall that?

"A Can we go back to the previous question?

"Q Yes, sir.

"A I did not discuss details of my conversation with anybody at Continental Grain, that is, my discussions with DeAngelis.

"As a result of those discussions, I made inquiry of Continental Grain with respect to their fina..cing of Allied.

"Q You testified that you asked Continetnal Grain whether they were extending as much financing to Allied as Allied wanted; is that correct?

"A That is correct.

gr12 "Berg

"A Yes.

"Q Did you ever discuss this meeting with Mr. Vogel?

"A What is the date of that?

"Q September 23, 1963.

"A No, I did not.

"Q Or with anybody else at Continental Grain?

"A No.

"Q There has been a good deal of testimony on your direct examination about the CEA. What is the CEA?

"A TheCEA is the Commodity ExchangeAuthority, which is the governmental agency administering the Commodity Exchange Act.

"Q That is a branch of the United States Government; is that correct?

"A It is.

"Q And ithas the duty and responsibility of administering the Commodity Exchange Act? Is that correct?

elr2 "Berg [2350]

"A No.

"Q There is no standing requirement of the produce exchange thatmemebers report their positions; is that correct?

"A That is correct.

"Q And in order to obtain the position, you must send out what is known as a position call?

"A That is correct.

"Q There is nothing in the rules or regulations of the produce exchange that prevents a member from telling you what its position is; is that correct?

"A That is correct.

"Q Did Ira Haupt & Co. ever tell you, prior to replying to the position call, what its position was in cottonseed oil futures contracts?

"A I t did not.

"Q And you had two conversations with Mr. Stevens?

"A I did.

"Q I suppose that anybody who wanted to reach you could have reached you during the whole months of September and October and November at the produce exchange; is that correct?

"A That is correct.

elrf 5 "Berg" [2387]

the claimants in the Haupt bankruptcy proceeding ever complain to you about any action taken by the Produce Exchange?

"A They never did.

"Q You never received any complaint from any banks with which Haupt deposited this collateral; is that correct?

"A That is correct.

"Q On the 20th of November 1963, was the decision that was taken on the 19th, to settle the contracts, ratified by the Board of Managers of the Produce Exchange?

"A It was.

"Q At that time, was there any discussion of the possibility of lawsuits against the Produce Exchange?

"A It was.

"Q At that time, was there any discussion of the possibility of lawsuits against the Produce Exchange?

"A Oh, yes.

"Q And would you tell us about that discussion --

"A I don't recall the details but the substance of the discussion was that by taking such action, we were opening ourselves to possible, if not probable, action being taken by any or all of the persons who had

elrf 5 "Berg" [2388]

held short positions might sue, because you settled the contracts and did not permit the market to decline further. Is that correct?

"A That is right.

"Q Were you in fact told that Mr. Peters and his attorney wanted to register a complaint about that?

"A They wanted -- Ralph Peters and his attorney -- they were at the front door on the floor of the Exchange, wanting to gain admission to the Board meeting to object to the settlement of the contracts.

"Q And were you told what the nature of Mr. Peters' complaint was?

"A Yes. Mr. Peters was short about 2,500 contracts of cottonseed oil and he objected to the Exchange taking any action that would result in the removal of his short position, because it was held against a cash long position represented by cottonseed oil warehouse receipts; genuine ones, not forged ones, and that in the settlement of the contract it would therefore remove his hedges, take away his price protection.

gwrf am 2a 1 "Berg" [2389]

"Q Were you told that Mr. Peters might bring a lawsuit as a result of the action which you had taken?

"A When the Board meeting adjourned, Mr. Shealy and I returned to my office and Mr. Peters and Mr. Schwartz, I think it was, his counsel, asked to see us, and we confirmed that the Board had ordered the contracts settled and they would be settled that day, as of a settlement price to be fixed basis Chicago.

"Q It is a fact, is it not, Mr. Berg, that despite the risk of lawsuits by the shorts, the Board decided to settle the contracts and to prevent the market from declining further by so doing?"

MR. BERNFELD: Objection, your Honor.

THE COURT: I think your objection comes a little late. That question is not objectionable.

MR. BERNFELD: I'm objecting to this line of questioning, your Honor, as to relevance.

THE COURT: I think some of the preceding questions should have been objected to. That one is appropriate.

So the objection is overruled.

(Page 1052, line 22:)

"A The Board did.

Q And in general terms, what were your duties in 1963?

A Generally, my duties were to oversee the processing of reports which were received from clearing associations, from brokerage firms and from individuals, and we had an analytical group to analyze the markets to keep us abreast of what was going on in the markets and to be fully aware of any action that was needed to have special attention.

Q As part of your duties during 1963 did you have occasion to visit the New York Produce Exchange?

A During that period I visited it almost daily for a period of time each day.

Q Just in general terms, what did you do there, sir?

A I observed the trading being done by the floor brokers, watched what the prices were, and directly discussed the action, if there was anything of importance, with the members on the floor or with other officials of the exchange, if I felt it necessary.

Q Do you remember a Mr. Berg, in 1963, sir, at the produce exchange?

Q Did you discuss Mr. DeAngelis during those conversations?

MR. SMITH: Your Honor, on behalf of the defendant Vogel I object to conversations at which he was not present.

THE COUPT: I will wait and see what comes out at the present time.

Go ahead. The ruling is deferred; that is the best way to do it.

Q I will restate the question:

During thecourse of those conversations with Mr. Berg during 1963 did you ever discuss Mr. DeAngelis or his company, Allied Crude?

A Well, I have to be careful in the way I answer, because I would like first to make known that in my capacity, I was unable at anytime to disclose information which I had available to me tc anyone outside of our agency. Therefore, any discussions with Mr. Berg, I could not mention Allied Crude to him; but during the conversations he could mention that name to me, and it could be discussed in a general way from that point of view.

Q I see.

Well, restating it then, during those conversations did Mr. Berg ever mention Mr. DeAngelis or Allied Crude?

A Yes, he did.

Q Do you recall under what circumstances he mentioned the names DeAngelis or Allied?

A Usually it would be with reference to what he had heard or knew about that occurred during the day's business.

Q Do you recall discussing with Mr. Berg the market situation during delivery periods?

A Yes.

Q During 1963.

Do you recall Mr. Berg referring to Mr. DeAngelis and his activities during delivery periods?

A I don't have any absolute recollection of specific conversations with him, but I feel sure that that probably was discussed from time to time.

Q Let me show you Plaintiff's Exhibit 41 for identification and see if that refreshes your recollection as to discussions with Mr. Berg during delivery periods when the name DeAngelis or Allied came up.

(Pause.)

THE COURT: What is Plaintiff's Exhibit 41?

MR. HARRIS: I'm sorry. Exhibit 41 are a series of memoranda written by Mr. McMinn.

Q Do you recognize --

A Yes, I do.

MR. HARRIS: I am referring to the second to last page, your Honor.

Q Do you recognize that?

A That is my memorandum.

Q Does that refresh your recollection that in the context of delivery, discussions of delivery periods, the name DeAngelis was mentioned by Mr. Berg?

A This refreshes my -- after reading this I can see that we did discuss deliveries during the procuring month. I would have to assume that -- here I say that DeAngelis -- Mr. Berg did make a statement about DeAngelis, so that would have to be true.

Q Do you recall approximately when you wrote that particular memorandum? Just referring to this particular page.

A This would be around the time that this matter was occurring.

THE COURT: We can't hear you, Mr. McMinn.

You will have to speak up.

MR. HARRIS: Perhaps if I stand back further, your Honor.

THE COURT: That would help.

Q Was your memory fresher at the time you wrote the memorandum --

THE COURT: I think you better go back. They haven't heard anything you have said.

MR. HARRIS: Maybe the easiest thing would be to have the reporter read back the last two or three questions and answers.

THE COURT: All right.

(Record read.)

THE COURT: When was that?

THE WITNESS: It would be during this whole period in 1963; the delivery months. It would not necessarily be specific to any one delivery month.

THE COURT: At any point, the conversations referred to in 1963; is that correct?

And you did the memorandum in 1963; is that correct?

THE WITNESS: That is correct.

THE COURT: All right, Mr. Harris.

Q And your memory, of course, was a lot fresher

in 1963 than it is today about these conversations?

A That is correct.

Q If you could turn I believe to the next page, Mr. McMinn, you will see another memorandum. Can you identify that page?

A Yes. This was another memorandum written by me, signed by me.

Q Do you recall when that memorandum was written?

A Around the same time, 1963.

Q Do you have any particular memory at the present time of the conversations with Mr. Berge referred to in that memorandum?

A Nothing more than what is here. I nave no further recollection on it.

Q But at the time you wrote the memorandum,, you had a recollection of the conversation?

A Yes, this was written around the time the conversation took place.

Q If you go back to the beginning of this exhibit you will see, Mr. McMinn, a reference to a conversation with Mr. Berg on February 27, 1963.

A Right.

Q Do you have any independent recollection today of that conversation with Mr. Berg on February

elrf 5 "McMinn-direct [2412]

27, 1963?

A No further than what is in the memorandum.

Q Do you recall when you wrote the memorandum?

A Around February, early March 1963.

MR. SMITH: Your Honor, on which page of Exhibit 41 is he referring to? There are two of February 27th.

(Pause.)

Q At the time you wrote the memorandum was the conversation fresh in your mind, sir?

A Yes, it was.

Q And did you in all these memoranda that you have referred to so far and this one too, did you attempt to record as accurately as you could what transpired in the conversation?

A That is correct.

Q Turn to the next page, sir.

Can you identify the document on the next page?

A This is a memorandum which I wrote to Mr. Callander, my superior in Washington under date of February 27, 1963.

Q Was that memorandum written on the date set forth on the memorandum month?

elrf 6 McMinn-direct [2413]

A Yes, it would have been, on February 27th.

Q If you look at the first paragraph of the memorandum, sir, you refer to the fact that you spoke with Mr. Roberg Berg; do you see that?

A Yes, I do.

Q Is that a conversation that took place on or about February 27?

A That is correct, it would be.

Q In your memorandum to Mr. Callander did you attempt to set forth accurately what the substance of your conversation was with Mr. Berg?

A Yes, I did.

Q Do you have any independent recollection today of that conversation with Mr. Berg?

A No, nothing more than what is in the memorandum.

Q Turning to the next page of Exhibit 41, can you identify what the document is that you are looking at now?

A This is another memorandum which I wrote regarding a discussion with Mr. Berg referring to ex-pit transactions.

Q The discussion took place on April 3rd?

A That is correct.

elrf 7 McMinn-direct [2414]

Q 1963?

A Right.

Q Do you have any recollection today as you sit here, of that conversation with Mr. Berg on April 3, 1963?

A I remember the purpose of the conversation and talking with him trying to find out more about these ex-pit trades because of the nature of them.

Q Do you remember anything other than what is written in the memorandum, sir?

A I would have to say it would be very vague.

Q And this memorandum that we are looking at, when was that written?

A Around sometime in April of 1963. There is no date on the memorandum.

Q At the time you wrote the memorandum, the events were fresher in your mind?

A Yes, it was.

Q And you attempted to accurately reflect in the memorandum the sense of the conversation, or the substance of it?

A Right.

Q And if you turn to the next page, there is another memorandum; is there not?

A Yes. This was a memorandum which I wrote to Mr. Callander under date of April 3, 1963 regarding July futures, cottonseed oil.

Q Does the memorandum also concern, if you look at the second paragraph, a conversation with Mr. Berg of the Produce Exchange?

A That is correct.

Q Is that the same conversation that was referred to in the previous memo?

A That's right, it does.

MR. O'DONNELL: Excuse me, your Honor, would you like to have a set of these memos?

THE COURT: It would help. I am sure I am going to be called upon to do something soon.

MR. O'DONNELL: This is my set. I put on a few checks.

THE COURT: Thank you.

Q Mr. McMinn, will you turn your attention to the next page, which is headed "Ex-pit Transaction." Do you see that?

A Yes, I do.

Q Can you identify that page?

A This is a memorandum which I wrote.

Q It concerns a visit to the Produce Exchange on September 30, 1963?

A That is correct.

Q Do you recall when you wrote the memorandum?

A Yes, I do.

Q When was that?

A It would be around this date of September 30th.

Q Do you have any independent recollection as you sit here today of your visit to the Produce Exchange on September 30, 1963?

A Not specifically, no.

Q Did you have a recollection of it at the time you wrote the memorandum?

A Yes, I did.

Q Did you accurately attempt to set forth in the memorandum what took place during your visit to the Produce Exchange?

A Absolutely.

Q If you turn to the next page, sir, there is another memorandum and this one is dated September 30, 1963.

A Yes, it is.

Q Do you recognize that memorandum?

A Yes, it is one I wrote.

Q Did you write it on or about September 30th?

A On September 30th to Mr. Callander.

Q This memorandum also concerns the September 30th visit to the Produce Exchange; isn't that right?

A Yes, it does.

Q Was this memorandum accurate or as accurate as you could make it when you wrote it?

A Yes, it is.

Q I think there is one more.

If you turn to the next page you will see a memorandum entitled ex-pit transactions.

A Right.

Q Do you recognize that memorandum?

A Yes. It is a memorandum which I wrote, yes.

Q When did you write it, sir?

A There is no date here. It would have to be

sometime in 1963, but the exact month, I don't know.

Q The memorandum concerns events that took place in 1963?

A It concerns what?

Q Does the memorandum that you are looking at concern events that took place in 1963?

A Yes, it does.

Q Do you have any independent recollection as you sit here today of the subject matters referred to in that memorandum?

A No, I don't.

Q At the time you wrote the memorandum did you have a recollection of the events that are referred to?

A Yes.

Q Did that memorandum also seek to accurately set forth those events?

A Yes, it does.

MR. HARRIS: Your Honor, I would like to offer Exhibit 41 for identification except for the first two pages which is really a cover letter.

MR. SMITH: Could I look at the last page, your Honor? My copy doesn't seem to have it.

MR. HARRIS: As past recollection recorded,

Washington, from T. Reed McMinn, CEA, New York and the subject is July cottonseed oil.

(Mr. Harris continued reading from Plaintiff's Exhibit 41 in evidence to the jury)

Q Mr. McMinn, can you look at the memo of April 3 from yourself to Mr. Callander. Do you see in the first line you refer to an unusual type of ex-pit transaction?

A Yes.

Q Will you tell usnow what was unusual, if you recall, about the ex-pit transaction that was referred to in that memorandum?

A After reading the rest of the memorandum, the unusual part of it was that it created new positions for both the purchaser and the seller, which was to me, was new at that time. I ordinarily, an ex-pit transaction didnot create a new position; it was merely an exchange from one party to another party which not then create new open positions.

Q Well, in the type of ex-pit transactions you just referred to where it's exchanged from one party to another, the open interest remains the same, is that correct?

elr3 McMinn-direct [2430]

A Ordinarily, the open interest figure does not change from an ordinary type of an ex-pit transaction. It's merely moving from one person to another person, so there is no change in the total open interest.

Q In this particular transaction, the open interest increased, is that right?

A That is correct.

Q To your knowledge, did that happen, this unusual type of ex-pit transaction take place on a number of occasions during 1963?

A After reading these memorandums, there were several of those that took place.

Q Mr. McMinn, during 1963 did the produce exchange have a responsibility to prevent manipulations, corners and squeezes in the market?

A Yes, that is one of the criteria for a contract market, in their designation as such, that is one of the things that they must do, try to prevent manipulations.

Q The CEA had a responsibility to prevent manipulations, corners and squeezes as well, is that correct?

A That's correct.

Q Was this reponsibility then shared between the CEA and the produce exchange?

A How do you mean, shared?

Q In other words, did both organizations have that responsibility?

THE COURT: Isn't that a waste of time? What are you asking that for?

MR. HARRIS: This is the last question, your Honor.

THE COURT: That doesn't make it any more, the fact that it's the last one --

MR. HARRIS: I think there's been a lot of testimony in this case that has been read in, for instance on the depositions and cross-examination to imply that the CEA had all the responsibility and the exchange didn't.

THE COURT: Yes, but the point about that is, that is something for you to ask, if it's an issue, for me to define in the charge. Why ask him?

MR. HARRIS: I agree it is a legal question, your Honor.

Then I have no further questions.

THE COURT: If you are going to be about five minutes --

we have proved so far, what we attempted to prove, and what our theory is. It is no big secret.

THE COURT: I am not interested in your saying what you proved so far. I think I understand that.

But the individual people that remain, you know, you made a case on your theory against the New York Produce Exchange. How good it is, that is something else. But I made a case. But thus far I don't see a case made against anybody else.

MR. HARRIS: Indeed, your Honor. We planned the trial that way. We are at the middle of the case. We haven't called them yet.

gwrf am 6a 1 McMinn-cross [2444]

(In open court, jury present.)

MR. O'DONNELL: May I proceed, your Honor?

THE COURT: Yes, please.

MR. O'DONNELL: Thank you.

CROSS EXAMINATION

BY MR. O'DONNELL:

Q Mr. McMinn, my name is O'Donnell and I represent the New York Produce Exchange and Messrs. MacDonald and Fashena, who are defendants in this action.

Can you hear me all right, sir?

A Yes.

Q Mr. McMinn, did you join the Commodity Exchange Authority in the Washington office of the Commodity Exchange Authority in about 1941?

A That is correct.

Q Did you remain there for about a year until you were transferred to the New York office in 1942 or thereabouts?

A Actually it was about six months while I was in Washington before I was transferred to New York.

Q And then did you continue to be in the New York office of the Commodity Exchange Authority for some period of time up to the 1950's when you became branch chief of the Trading and Reports Department?

A Yes, all except for about two years, which I was in the service.

Q Did you remain the branch chief of the Trading and Reports Department until about 1966 when you became director of the New York office of the Commodity Exchange Authority?

A That is correct.

Q You told us this morning, sir, that you were now acting regional administrator for the Commodities Futures Trading Commission which is an agency of the Federal Government, is it, sir?

A That is correct.

Q And it has taken over, has it, for what was the Commodity Exchange Authority with respect to the regulation of the commodity markets?

A Yes, it has.

Q Back in 1963 at the time you were branch chief of the Trading and Reports Department, was the primary function of that department to concurrently monitor ongoing trading and activities on the floor of the Exchange, the New York Produce Exchange?

A That would be one of the exchanges which we would have responsibility for, yes.

Q During that period of time, sir, did that

work of the Trading and Report Department for which you were branch chief include processing and reviewing these so-called form 1001 and 1003 reports of brokers and traders?

A That is correct.

Q Were those the reports by brokers and traders to the Commodity Exchange Authority which the Commodity Exchange Authority held as confidential?

A Yes, they were held confidential.

Q They were not disclosed to the New York Produce Exchange by the Commodity Exchange Authority, were they, sir?

A No, they were not.

Q They were not sent to the New York Produce Exchange, they were just sent to the Commodity Exchange Authority; is that not so?

A That is true.

Q Back in 1963 did the Commodity Exchange Authority and the Trading and Report Department also employ economists to review ongoing trading and analyze the cause of price changes, for example?

A That is correct.

Q And changes of volume and changes of open interest and the like?

A Right.

Q Mr. Harris asked you, Mr. McMinn, whether in 1963 you visited the floor of the New York Produce Exchange, and I believe you told him you did that almost daily; is that right?

A That is correct.

Q And you were at various times during the day, were you, as you saw fit?

A Yes, but I would say most frequent would be around the closing period of each day.

Q Most days you would be there at the close of the session; is that right?

A That is correct.

Q And sometimes were you there at the open of the session?

A There would be times, yes.

Q And sometimes you would be there during the course of the day as well, would you not, sir?

A Be less frequent.

Q While you were there you would have conversations with floor brokers, would you, from time to time?

A Yes, I would.

Q And you would have conversations with Mr.

Berg from time to time if he were available?

A That is correct.

Q And perhaps with Mr. MacDonald if he were available?

A That is correct.

Q Would you sometimes have conversations with Mr. Fashena if he happened to be on the floor?

A That is correct.

Q These were all conversations that you would have for the purpose of gathering information that might be useful to you and useful to the Commodity Exchange Authority for which you were working, is that not right?

A That is correct.

Q Then, sir, would you take that information from whatever source you obtained it and from time to time if you thought it worthy of it, pass along the information to the Commodity Exchange Authority people in Washington?

A That is true.

Q Would you sometimes do that by telephone to the people in Washington and sometimes by memoranda?

A Right.

Q Your job in 1963 in part was to be the eyes

6B

gr1 McMinn-cross [2452]

Q When you were on the floor of the exchange on an almost daily basis, you considered it a part of your duties and you were looking, were you not, Mr. McMinn, to see whether the market in cottonseed oil futures at that time was or was not an orderly market?

A That's correct.

Q And you were looking to see as a part of your own regular duties, were you not, to look to see whether you could observe any price manipulation? Was that something you were doing?

A That was my duty, yes; part of my duties.

Q That was part of your duties in '63, and also if you could observe any corner or squeeze, that would be part of your duties; would it not?

A That is correct.

Q If you had observed any such price manipulation with respect to the market in 1963, you would report it to your people in Washington who supervised you; would you not?

A Yes, had I observed any.

Q And you did not report any such price manipulation, did you,sir --

MR. HARRIS: Objection.

gr3 McMinn-cross [2454]

A I have no recollection of having seen any .

Q Did you, Mr. McMinn, in 1963, at any time in that year, observe any corner of the cottonseed oil futures market?

A I have no recollection of having seen such.

Q I ask you the same question: Did you in 1963 observe any squeeze of the cottonseed oil market?

A I have no recollection of seeing that either.

Q Thank you, sir.

You have told us about conversations that you had with Mr. Berg in response to Mr. Harris' questions.

Had you known Mr. Berg for some considerable period of time prior to 1963?

A Yes.

Q And you had various conversations with him in 1963?

A That's correct.

Q Did you know that he was the managing director -- I think you used the word business

squeezing or cornering in 1963, am I right, sir, that you did not, to the bestof your knowledge or recollection, write any memoranda to Washington on that subject during 1963?

MR. HARRIS: Objection, your Honor.

THE COURT: The objection is going to be sustained.

Q Turning, Mr. McMinn,to one of these memoranda of yours, the one that Mr. Harris durected your attention to, which is a memorandum by you to Mr. Callander of the Commodity Exchange Authority on April 3, 1963, on the subject of July cottonseed oil.

The first sentence states in your memorandum, "As indicated to you on the teletype, an unusual type of ex-pit transaction was executed yesterday on the New York Produce Exchange involving 936 tank cars of oil."

Do you see that, sir?

A Yes, sir.

Q My question to you about that unusual type of ex-pit transaction which you have told us at thattime involved the creation of a new position -- do you recall that?

A Yes.

Q My question to you is that you found in 1963 that to be a legitimate type of ex-pit transaction under the rules and regulations of the exchange; was it not?

A Yes.

Q And those rules and regulations of the exchange were subject to the supervision of the Commodities Exchange Authority at that time?

A Yes, they were.

Q At any time up to November 20, 1963 when you recall trading was suspended in cottonseed oil futures by the New York Produce Exchange -- do you recall that, sir?

A Yes, I do.

Q Up to that time in 1963 had the New York Produce Exchange been disciplined or suspended or subject to any kind of censure by the Commodity Exchange Authority, to the best of your knowledge?

A To the best of my knowledge, no.

Q Mr. McMinn, those economists that the Commodity Exchange Authority had, to your knowledge, did they prepare liquidation reports from time to time about trading on the New York Produce Exchange?

Q Am I right, Mr. McMinn, that during 1963 when you had these conversations with Mr. Berg and others at the New York Produce Exchange, you never re·ealed to any of those persons what the Commodity Exchange Authority knew about the trading positions of brokers and traders who reported to the New York Produce -- reported to the Commodity Exchange Authority, is that right, sir?

A You are correct on that.

Q And the statute requires the Commodity Exchange Authority to keep that information confidential to itself, does it?

A That is correct.

Q So that when Mr. Berg talked to you about Mr. DeAngelis or Allied Crude Vegetable, it was, I believe you said in response to Mr. Harris' questions, Mr. Berg who was supplying you with information, not you who was supplying Mr. Berg with information, is that right?

A That is correct.

Q And you could observe from Mr. Berg's discussions with you that he didn't have exact or precise or much information about Mr. DeAngelis' trading position, isn't that right?

A I guess you would say it wouldn't be precise, it would be to the best of his knowledge from what he had heard, or --

Q From what he could observe on theexchange?

A Yes.

Q Is it the fact, Mr. McMinn, that you were reporting regularly during 1963 to the Commodity Exchange people an analysis of what the Allied-DeAngelis position was with respect to cottonseed oil futures?

A Referring to our Washington office now.

Q Yes, supplying memoranda to your Washington office?

MR. HARRIS: Your Honor, could I have the question re-read, I missed the beginning.

THE COURT: The question was, was he reporting regularly an analysis of DeAngelis' position.

MR. HARRIS: That is what I thought the question was.

Then I'd like to object to that, your Honor. Again we are back to internal reports. Mr. O'Donnell, I'm sure, will concede they were not discussed with Mr. Berg.

80

elr3 McMinn-cross [2462]

THE COURT: Were you making those reports?

THE WITNESS: Yes. My staff was.

MR. O'DONNELL: Under his supervision. I have the reports here, your Honor.

THE COURT: All right. The answer has been given, but I don't know how much further we are going to go.

Q You were making those reports, were you not, during 1963 to Mr. Callander in Washington?

A That's correct.

Q Let me just show you one of them, Defendants' Exhibit 194N for identification, and ask you if you recognize that as one of your reports.

(Pause)

A Yes, this is a report which was prepared in my department.

Q That's dated October 7, 1963, is it not, sir?

A That is correct.

Q It was signed by you also, sir?

A My initials are on the back, on the last page of it.

Q I show you some teletype messages which have been marked Defendants' exhibit 195A for

elr4 McMinn-cross [2463]

identification through 195G for identification and I ask you if those teletype messages run from November 12, 1963 to, one for each day, through November 20, 1963; is that right, sir?

MR. HARRIS: Your Honor, I hate to keep objecting, but I don't know where all this is leading.

THE COURT: He hasn't made any offer yet.

MR. O'DONNELL: Just let me identify it.

MR. HARRIS: I think we are being prejudiced by this accumulation of paper implying that the CEA did this or didn't do this.

MR. O'DONNELL: That is not the purpose of it.

MR. HARRIS: Maybe we can approach the bench, your Honor, and look at the pieces of paper and see what they are.

THE COURT: Let's go.

Q Can you identify, Mr. McMinn, what those pieces of paper are in that exhibit which you have in your hand?

A Yes, I can.

Q Are those teletype messages from you to Mr. Callander in Washington?

elr5 McMinn-cross [2464]

A That is correct.

Q And are they teletype messages in some sort of easily understood code, as to what Mr. DeAngelis' trading position was in the cottonseed oil market on those specific days?

A Not trading, but positions.

Q Positions, yes.

To your knowledge, Mr. McMinn, throughout 1963, at any time up to November 20, 1963 when the produce exchange shut down did anybody, to your knowledge, in the Commodity Exchange Authority ever tell the New York Produce Exchange that it should shut down by reason of any of Allied Crude, Haupt or DeAngelis activity?

A Not to my knowledge.

THE COURT: He said not to his knowledge.

Q Mr. McMinn, is it also correct that up to November 20, 1963, to the best of your knowledge, nobody in the Commodity Exchange Authority told the New York Produce Exchange to take any action of any kind with respect to either Mr. DeAngelis, Allied Crude or Ira Haupt & Company?

A Not to my knowledge.

Q I would like to show you, sir, Defendants'

Q To your knowledge, was Merrill Lynch acting as owner or principal as regards the actual oil in question?

A To my knowledge they would never take delivery of the actual oil for their own account.

MR. HARRIS: Your Honor, the memo states right in the next sentence that Merrill Lynch's customer was Bunge Corporation. There is no dispute.

Q Mr. McMinn, did you know in 1963 that Merrill Lynch was a substantial commodities brokerage house?

A Yes, I know that.

Q And it would not be unusual for Merrill Lynch to be responsible for a sizable portion of the volume on this or any other exchange, is that correct?

A That is correct.

MR. MINNEROP: No further questions.

MR. FRYER: I have no questions, your Honor.

THE COURT: Mr. Liman, Mr. Smith?

CROSS EXAMINATION

BY MR. SMITH:

Q My name is Robert Smith, Mr. McMinn, I represent Harold Vogel. Mr. Vogel was not present at any of your meetings with Mr. Berg, was he?

A No, he was not.

Q You testified on Mr. O'Donnell's examination that the CEA was -- that the positions of traders were reported to the CEA and that indeed you were sending these teletype messages to Washington daily with the position of Allied Crude Vegetable Oil, is that right?

A During this period he asked about, yes.

Q In fact, the exhibit he showed you, which I think is 195-A to H is from November 12th to 20th you were reporting the position daily to Washington, is that right?

A That is correct.

Q In fact, do you remember that you were reporting the position daily to Washington for several weeks prior to that time?

A A couple of weeks or probably more.

Q Weeks or more.

You did not disclose that position to Harold Vogel?

A Never.

Q Or to Continental Grain Company?

A That is correct.

Q Or anybody else connected with the New York Produce Exchange?

elrf 6 McMinn-cross [2477]

A That is correct.

Q On the ex-pits, Mr. McMinn, Mr. O'Donnell asked you about the transaction referred to in your February 27th memorandum that increased both parties open position and there was a similar statement in your memorandum of April 3rd, and you testified that Mr. Berg explained to you at that time that those transactions were permitted by Rule 6-B of the Produce Exchange, is that right?

A That is correct.

Q And you did not question his explanation in any way?

A No.

Q The memorandum also says, does it not, that Mr. Berg explained to you that those transactions were done for financing purposes?

A That would be a part of his explanation as to why it would be done.

Q And there is a later memorandum, the memorandum of September 30th which refers to an ex-pit between Ira Haupt & Co. -- a couple of ex-pits between Ira Haupt & Co. and Ralph Peters, do you remember that memorandum?

A Yes.

elrf 7 McMinn-cross [2478]

Q Those ex-pits were in equal and offsetting amounts, but for different months, is that right?

A That's right.

Q So that the net effect was to change a position from the month of, I think it was October to December, is that right?

A That is correct.

Q Away from the near month to the deferred month?

A That is what my memorandum said.

Q And the position stayed the same but was moved forward to a later month?

A Right.

Q Is that consistent, Mr. McMinn, with someone who is trying to squeeze the shorts to change a position from the near month to the deferred month?

A I wouldn't necessarily think so. Basically from the fact that we apparently made no issue of it.

Q A squeeze is, somebody who is trying to squeeze wants to accumulate the biggest possible position in the near month, is that correct?

A That is correct.

Q And this was a switch away from the near month to the deferred month, is that right?

A That's right.

Q And you knew of that ex-pit at or about the time it occurred, September 30, 1963?

A That's right.

Q And it was explained to you then that it was part of Allied financing?

A Right.

Q And you did not tell Mr. Berg that you thought there was anything illegal or improper about that?

A Not to my recollection.

Q And your memo does not reflect it?

A That's right.

Q Mr. McMinn, would you take another look at Plaintiff's Exhibit 41 for identification, and can you look at the first two pages, which are not in evidence. I think it is a letter addressed to Mr. Caldwell. Will you look at those pages, and then look at the rest of the exhibit. I am going to ask you, does it refresh your recollection that certain of the documents, and I mean the undated documents that are in the rest of the exhibit, were prepared about the same time as the letter to Mr. Caldwell, which is January, 1964?

A That would be correct.

Q So the undated memo, part of the exhibit that is in evidence consists of some memos that are dated and some that are undated, is that correct?

A Right.

Q And the dated ones were prepared on or about the date that they bear, is that right?

A That's right.

Q And the undated ones were prepared later, in or about January 1964, is that correct?

A I would have to say yes.

Q They were prepared after the events of November, after the events with which we have been concerned?

A That is correct.

Q And they reflect your opinion at that time?

I will withdraw that.

They reflect your understanding of the situation at that time?

A That is correct.

Q At that time you still had no reason to question the ex-pit transactions that are reflected in those memorandums?

A Apparently not.

Q And you have no reason to question those

transactions to this day, do you?

A No.

MR. SMITH: I have no further questions.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. McMinn, Mr. Smith just asked you, and I believe you responded that with regard to a couple of ex-pit transactions referred to in Exhibit 41 for identification, that you accepted Mr. Berg's statement that those ex-pits complied with Rule 6-B?

A That is correct.

Q And that you made no subsequent investigation on your own to see whether that was correct?

A Right.

Q That is because you relied on Mr. Berg, Mr. Berg's views in that regard, isn't that correct?

A As an expert on the rules of the Produce Exchange, yes.

Q Mr. Smith also asked you some questions about squeezes and indicated, I believe you indicated in response to one of his questions that someone trying to pull off a squeeze would try and accumulate a lot of contract in the near month, is that correct?

A That would be the most usual thing.

sort of information; isn't that right?

A All those factors would have to be considered.

Q You would have to consider the cost, would you not, of moving the oil into the registered warehouse and refining it, if necessary, and the other steps required?

A Yes.

Q All of those factors would be necessary to determine for sure whether or not there was a squeeze developing?

A Right.

Q The factors that we just discussed, would they be in your view enough to make you want to make the further inquiry at that point?

A Any time we see a considerable large position, it alerts us to the possibility of something occurring and going further into the situation to get all the data we feel necessary to arrive at whether or not a manipulation is potential or has occurred.

Q I believe you have answered I guess it was one of Mr. O'Donnell's questions that, to your knowledge, nobody at the CEA told the Exchange that it ought to close or do anything during the period November 14th to November 20th; is that correct?

you not, in response to his questions just now that you would need a lot more information than appears on that page to be able to come to any conclusion about whether you could smell out a manipulation, squeeze or corner?

A That is correct.

Q I would like to show you Defendants' Exhibit 1A for identification and ask you if you can see that that document is an authenticated report prepared by the United States Department of Agriculture, Commodity Exchange Authority, of an investigation of the operations of Allied Crude from July 1 to November 22, 1963?

MR. HARRIS: Why doesn't he ask the witness to identify the document rather than making a speech aboutwhat it is; has he ever seen it before or what?

Q Do you recognize that as such a report?

A I do.

Q With respect to page 24, you see the statement that as of October --

MR. HARRIS: I object, your Honor.

MR. O'DONNELL: All right.

Q Can you tell us, Mr. McMinn, approximately how many tank cars of oil there were available in

October and November 1963 of actual cottonseed oil?

THE COURT: Mr. O'Donnell, I don't think I am going to allow any more of this. The reason I allowed the answers before was because of Mr. Smith's question about the near month and the far month in regard to a squeeze. That's been answered. I am not going to allow anything further on this.

MR. O'DONNELL: I will change the subject, your Honor.

Q With respect to those conversations that you had, Mr. McMinn, with Mr. Berg, Mr. Berg, as I understand it, was telling you what he understood MR. DeAngelis was doing from time to time as best as Mr. Berg could figure out?

A That's correct.

THE COURT: He's already answered that.

Q Did you, generally speaking, tell Mr. Berg from time to time that you were checking into the market, checking into activities and conditions in cottonseed oil through the fall of 1963 without revealing what you were doing?

A In other words, I would use that terminology, but the knowledge that I was there and the purpose of my work and the quetions that I posed from time to

time would certainly give that indication.

Q You regard, as I understand it, Mr. Berg as a conscientious manager in the fall of 1963, did you not?

A That is correct.

Q Did you know, Mr. McMinn, that after November 14, 1963, the date of that exhibit that you have in front of you -- did you know that after then, as late as November 18, 1963, Ira Haupt engaged in an ex-oit transaction with Ralph Peters that involved an additional exposure of Ira Haupt on the long side to the tune of 2500 contracts?

THE COURT: Objection sustained.

MR. O'DONNELL: Thank you, your Honor. That is all I have.

THE COURT: All right.

Anything further, Mr. Minnerop?

MR. MINNEROP: No, your Honor.

THE COURT: Mr. Smith?

MR.SMITH: No, your Honor.

THE COURT: All right, Mr. McMinn. Thank you very much.

You may step down.

(Witness excused)

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AFTERNOON SESSION
2:00 p.m.

(In open court; jury present)

THE COURT: I announced yesterday that we were suspending at 4:30 today and if there is no serious objection, I would propose that we go through to 4:30 without any break, but if there is serious objection --

MR. O'DONNELL: There seems to be.

THE COURT: Well, all right.

Mr. Harris, call your next witness.

MR. HARRIS: Mr. Fashena, please.

S I D N E Y F A S H E N A , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KIRSCH:

Q Mr. Fashena, by whom are you presently employed?

A I am presently employed by Loeb, Rhoades & Company.

Q By whom were you employed in 1963?

A I was a partner of I. Usiskin & Company.

Q Did you have any associate partners?

elr3 Fashena-direct [2497]

committee, and the publicity committee, if I am not mistaken.

Q Were you a member of the board of managers?

A I was, because of my position as an officer.

Q Throughout 1963?

A Throughout 1963.

Q When did you become a member of the board of managers, approximately?

A Approximately in the early 1950s.

Q Did you discuss becoming a member of the board with Mr. Usiskin?

A Yes, I believe I did.

THE COURT: With whom?

MR. KIRSCH: Mr. Usiskin, his partner.

THE COURT: Mr. Kirsch and everyone, let's not begin asking questions that have no bearing on these issues. You got background, now, let's get to whatever you want to find out from him.

Q Were you on the board of managers to represent or speak for a particular segment of the street during 1963?

A I don't think I'd describe it that way. I think I was put on the board of managers because I was a small oil trader representing a small trading

firm.

Q During 1963 was the primary business of I. Usiskin & Company trading?

A It was.

Q In futures?

A In futures.

Q What was your role at the firm?

A I was an analyst specializing principally in fats and oils, and I was also trading on the floor.

Q When you say trading on the floor, did that include the floor of the New York Produce Exchange?

A Yes.

Q And an analyst in fats and oils included cottonseed oil?

A That is correct.

Q During 1963 what means of information did you have at hand in your analysis of the cottonseed oil market?

A First, the facilities that were available to me on the trading floor of the produce exchange.

Q What were they?

A Tapes.

Q Which ones?

Q About how often would you say you were on the trading floor of the Produce Exchange in 1963, on an average basis?

A On an average basis I was there every day excepting when I had family problems, illness and things of that sort, and I would be absent myself as little as possible.

Q So primarily during the course of the working day you were on the floor of the Exchange?

A Yes.

Q When did you do your analysis? On the floor or back in your office?

A I would say that most of my analytical work was done after the close, because during the day I wanted to watch the trading session closely.

Q How active a trader were you?

A Fairely active but not in big scale.

Q In and out a lot?

A In and out, but not in a big scale.

Q How many contracts would be your average transaction?

A Oh, in each day I possibly have 20 purchases and 30 sales or something of that nature.

Q What would be the size of your position

elrf 2 Fashena-direct [2507]

on an average basis?

A I don't think that we had more than a net of 20 lots, on the average; either long or short. We might have had a straddle position of not much more than 20 or 30 lots on each side.

Q During 1963 you noticed, did you not, that the volume of trading on the Exchange was up over 1962?

A Yes, I did.

Q Was it up significantly?

A Yes, it was up significantly.

Q Did you know the size of the open position was up significantly in 1963?

A Yes, I did.

Q Was that also a significant increase?

A Yes, it was significant.

Q When you did your analysis, did open interest, volume of trading have anything to do with your analysis? Were they factors?

A Only to a small extent.

Q On what did you primarily rely in doing your analysis of the market?

A My understanding of fundamentals of supply and demand and in relation to price charts which I

maintained on a daily basis.

Q When you say price charts, is that for each month you would keep a chart showing what the prices were?

A That is correct. For each openg.

Q Opening and closing, high and low?

A There were several kinds of charts, several tools.

Q Would you describe them, please?

A One is called a high-low close chart, which is a daily. I also kept a high-low close chart on a weekly basis and on a monthly basis. I also kept what is called a point and figure chart which gave me information that was not available to me from the high-low chart.

Q What goes on a point and figure chart?

A The point and figure chart is a chart which does not register moves on a day by day basis. It registers moves on a point basis, and if I use a unit of 5 points, the chart would only register moves up and down if they reach 5 points.

And if the market moved 10 points that would require two entries in the same direction.

Q Did you include volume figures or open

interest figures in any of your charts?

A Yes, that was included in the chart, in the high-low close daily chart.

Q Both volume and open interest?

A Both volume and open interest.

Q Do you recall whether there were a greater number of ex-pit transactions in 1963 than there had been in 1962?

A There was a greater number of ex-pits.

Q Significantly greater?

A Yes, significantly greater.

Q Did you attach any significance to that in your analysis of the market?

A In forecasting, no.

Q Did you do any other analyses of the market besides forecasting?

A Yes, I did.

Q What were those other analyses?

A Comparisons of stocks on hand, comparisons of consumption, comparisons of visible supplies.

THE COURT: Mr. Fashena, Mr. Kirsch asked you was the ex-pit transactions significantly higher, and you said yes, and then I think I am confused with the next series of questions.

elrf 5 Pashena-direct [2505]

What do you mean by that they were significantly higher?

THE WITNESS: Well, I --

THE COURT: Apparently I couldn't understand what signficant means, so you tell me.

THE WITNESS: I am defining significant numerically.

THE COURT: I see.

THE WITNESS: Was that your question?

Q That was my intent, yes. In addition to being numerically higher was there anything unusual about the ex-pit transactions?

A They were more frequent.

Q So there were more of them?

A There were more of them and they were appearing more frequently.

Q Isn't that more or less the same thing?

A No.

Q I'm not sure I understand.

What is the distinction that you are drawing between more of them? Do you mean more contracts in each ex-pit?

A I observed from the board, and this is all I could observe about ex-pits -- I observed from the chalk board that ex-pits were being posted in quantities larger than I had been accustomed to see and more frequently from the standpoint of time than I had been accustomed to see.

Q Did you take that into consideration in any of your analyses of the futures market?

A No, I did not.

Q Did you think it had any effect on the futures market?

A No, I did not.

Q Did you ever ask why ex-pits were taking place more frequently and in greater quantities?

A I don't recall exactly when or how or who I

asked, but I had assumed after watching the markets for a long time that these ex-pits were exchanges for physicals.

Q What significance, if any, did you attach to that fact?

A That the market was being used to obtain physical oil.

Q Was that an unusual situation for the market?

A Yes.

Q Very unusual?

A Well, I don't know how -- I had not been accustomed to seeing that.

Q What, if anything, did the fact that the market was now being used in connection with deliveries of oil -- I take it that is what you are referring to when you say exchanges of physicals. Are you talking about deliveries?

A No, I'm talking about ex-pits.

Q You are talking strictly ex-pits at this point?

A I'm talking strictly ex-pit.

Q This didn't indicate anything to you about the character of the market or the open interest or the volume?

A No.

gwrf 4 Fashena-direct 2509

make their bids and offers competitively in an open way under rules and regulations and prices can be established.

Q Does an auction market function better when all the bids and offers are brought to the floor?

A No, it does not.

Q Does it make any difference to the auction market whether the bids and offers are on the floor or not?

A If ex-pits were not allowed and the transactions had to be done through bids and offers on the floor, they would be a very destabilizing influence on prices.

Q Why is that?

A Because the ex-pit is an exchange for physicals against futures at an agreed upon or negotiated difference which could not be executed if the futures had to be peddled in the ring at open outcry.

Q What is it about the ex-pit that makes them unsuitable? I understand that you are exchanging futures for physicals.

Why couldn't you do that on the floor?

A If you didn't have an ex-pit mechanism, as I understand it, you could not exchange physicals

for futures or futures for physicals in an organized manner. You might just as well scrap the ex-pit.

Q What do you mean "scrap the ex-pit"?

A Eliminate it.

Q What would happen if you eliminated it?

A Then you would have to destabilize the markets.

Q Didn't the existence of the ex-pits in 1963 indicate to you that there were additional forces at work in the market which if they had been put on the floor of the market would have destabilized it?

A No, I thought it was fortunate that there was this mechanism for permitting the commercial participants in the market to exchange cash physicals for futures at an agreed upon difference.

Q When you say exchange futures for physicals, are you suggesting that one party delivers actual oil and the other one gives up a futures position?

A Yes, that is basically what it is.

Q Why isn't that the same thing as tendering for delivery on the Exchange?

A Tendering for delivery on the Exchange is an entirely different mechanism. Let me try to explain that.

actual oil or is expecting to receive actual oil and has hedged himself. When that crosses, the tendency will be for the open interest to be reduced.

Q During 1963 did the ex-pits tend to reduce or increase the open interest?

A I couldn't answer that becaues I don't think I followed that as closely as I followed other aspects of the market.

Q You never made any investigation into the reasons behind the ex-pits in 1963?

A No.

Q Neither for your firm or as a member of the board of managers?

A That is correct.

Q Did you know during 1963 that the number of contracts being settled by delivery was greater than it had been in 1962?

A I did.

Q Do you know to what extent it was greater?

A No.

Q Did you know in 1963?

A No.

Q You never made any investigation into that

3A

elr1 Fashena-direct [2517]

Q Had you observed this yourself?

A Yes, I had.

Q Did you also observe what happened when the market went up a little bit?

A There was good buying there too.

Q Was there selling?

A Good selling as well.

Q What makes you think that there was sometning more about buying on weakness than the buying and selling when the market moved up? What was more significant about that?

A I didn't say it was more significant. I simply noticed that there was a demand for oil.

Q So your reading of the market was that there was a strong buying influence, is that a fair statement?

A I'm sorry, I didn't hear that.

Q Was it your reading of the market from your position on the floor in 1963 that there was a strong buying influence on prices?

A Yes.

Q Did the market go up as a result?

A To some extent, yes.

Q It didn't go down?

A Well, it was fluctuating all during the day. It wasn't constantly going up or going down. The market was fluctuating in what I would call a normal pattern.

Q Did you know who was doing the buying?

A No, I did not know.

Q Did you have any idea?

A Being a seasoned trader on the floor for many years, I was very skeptical about what seemed to be obvious. So that if somebody told me that X, Y or Z was buying, I would be rather suspicious, because normally they wouldn't tell me.

And secondly, if they told me, I would feel that perhaps this was a camouflage and that actually somebody else might be buying.

Q Were you told that some people were buying?

A Yes, I was told that Allied was a buyer.

Q And who was telling you this.

A Floor brokers around the trading ring.

Q Did they tell you which floor brokers were doing the buying or Allied?

A Well, I knew that -- I shouldn't say I knew -- I belie-ed that Allied was using two floor

brokers, without really knowing. I believed that Allied was using a floor broker by the name of James Comenzo and another floor broker by the name of Fontana.

However, I did not preclude the idea that other floor brokers might have been acting for Allied, either as buyers or as sellers.

Q But you had a pretty good idea, though, that Allied was one of the main buyers in the market?

A No, I didn't have a pretty good idea. I simply heard this more often than I heard other things.

Q Didyou have any belief as to it one way or the other?

A Yes, I believed that they were buyers because I knew they were exporters; and they couldn't be exporters unless they had oil.

Q So all your information tied together to the fact that Allied was a big buyer of futures?

A Well, I'd like to quality the word "information." I'd like to change "information" to "talk."

Q All the talk was, then, that Allied was a big buyer?

A Was a buyer.

Q Was a big buyer?

which included the cotton oil market.

Q Had you ever heard that Allied was responsible for many of the ex-pit transactions?

A No. The only thing I knew about the ex-pits was the postings which registered the quantity and thenames of the commion merchants that were on both sides of the transactions.

Q Did you ever make any assumptions or hear any talk about who the ultimate customer of the clearing membership was?

A No, I did not.

Q You never heard it was Allied?

A I heard it, but I didn't make any assumptions.

Q How often did you hear it?

A I can't remember that.

Q Did you ever investigate?

A I did not.

Q Did you have any feeling for the market in June, as a trader, as to whether it was behaving normally or not?

A I thought it was behaving normally and strongly.

Q What was the supply of oil like during the summer of 1963?

elr7 Fashena-direct [2523]

A Summer of '63 -- the supply of oil was very comfortable.

Q What do you mean by very comfortable? Large, small, medium --

A A large supply of oil.

Q And the market was strong in face of this large supply of oil?

A Yes, the market was strong at a reasonable level. It was well supported at a reasonable price level.

Q What were the factors that went into your determination of whether it was a reasonable price level?

A Historical prices.

Q Not current supply and demand? Was that a factor too?

A On the basis of current supply and demand I thought theprices were reasonable.

Q Did you notice anything during 1963 about the quantity of oil that was in the east, whether it was increasing or not? Whether there was an increasing quantity of oil on the east coast during 1963?

A Yes. I remember that there was a flow of oil to the east coast terminals.

Q Did you notice an increase in the number of warehouses that were certified to carry cottonseed oil during 1963

A Yes, I did.

Q Did you know why there was such an increase?

A Yes. I thought it was due to the demand for certificated cottonseed oil for export.

Q Were you surprised at the increase?

A No, I was not.

Q Not at all?

A No, I was not at all surprised, because I saw good export demand and a larger cotton crop.

Q Was there any surprise expressed on the floor of the Exchange during 1963 at the increase in the number of warehouses?

A I don't remember any expressions of surprise. I think everybody thought the way I did.

Q Let me read to you from your examination before trial in this case, at page 302, and perhaps that will refresh your recollection:

"Q Mr. Fashena, was the subject of the reason for the increase in the applications of licensed warehouse capacity ever discussed by you on the floor of the Produce Exchange in 1962?

"A No, I don't think I ever discussed the licensing.

"Q Well, the reason for the increase, was that ever discussed when you were a party to the discussion?

"A I believe I must have listened to discussions about the reasons for increase in the warehouses certified to carry cottonseed oil.

"Q Was this in 1963?

"A In 1963.

"Q Do you recall the substance of those conversations?

"A Surprise at the number.

"Q Surprise at the number of applications?

"A Surprise at the growth in the number of applications and in the size of the certificated stock."

Does that refresh your recollection that there was surprise expressed on the floor of the Exchange during 1963 at those factors?

A I was not surprised.

Q That wasn't my question, sir.

Do you recall that there was surprise expressed on the floor?

A No, I do not recall that there was surprise expressed on the floor.

Q Do you recall so testifying?

A No, I do not recall so testifying.

Q In 1967? Would you like to look at the transcript?

A No, I don't think it is necessary.

Q Do you deny that you made those statements in 1967?

A If it is in that record, I don't deny it.

Q Do you accept that your recollection was better than in 1967 than it is today?

A I would imagine that -- I think my recollection is '67 was better than it is now.

Q But you still don't think there was any surprise expressed?

A No, I don't.

Q Did you notice an increase in the number of deliveries in 1963 as opposed to 1962?

MR. O'DONNELL: That has already been covered, your Honor.

THE COURT: He said yes.

Q Did the increased number of deliveries have any relationship to supply and demand?

A No.

Q Did it have any effect on the price in

the futures market?

A It could have had an effect on the price without affecting supply and demand.

Q Did it have an effect on the price?

A I can't recollect whether it had an effect on the price, but I would say, from what I know of markets, that it would have a moderating effect on price.

Q Why is that?

A Because the short, instead of covering, which means bidding for oil, would be delivering it.

Q When you say moderating, that is as distinguished from increasing the price; it is holding it steady or dropping it?

A Correct.

Q Do you recall anyone expressing any concern or alarm at the quantity of cottonseed oil being shipped and stored on the east coast during 1963?

A No, I do not.

Q I refer you to Plaintiff's Exhibit 12-G for identification and ask whether you know what that is?

A Yes, I know this to be minutes of a meeting of the Board of Managers.

Q Were you present at that meeting?

gwrf pm 4a 1 Fashena-direct 2531

Q Is it your testimony that you do not recall one way or the other whether there was an investigation?

A I do not recall.

Q Do you remember any conversations during 1963 as to whether it was more attractive to sell oil at the price on the board futures exchange than it was to sell it in the cash market?

A Yes.

Q You recall those conversations?

A I recall those conversations.

Q Was that a fact in addition to being the subject of conversations? Was it, in fact, more attractive to sell oil at the board price --

A It was an economic -- the seller obtained a small premium for selling at the board price as compared to selling the oil in the cash market.

Q Is that an unusual situation?

A I would like to answer by saying that in marketplaces the unusual is the usual.

Q Yes, but was it unusual for that marketplace?

A I would say yes.

Q Is there any correlation between the fact that it was more attractive to sell oil on the board of the futures market than in the cash market

and the fact that there was an increase in licensed warehouse capacity?

A Yes, there is a correlation.

Q What is that correlation?

A The correlation is that if you sell oil on the board, you have to sell oil in -- you have to deliver oil in a certificated warehouse that has been approved by the New York Produce Exchange.

Q During 1963 did you know anything about Mr. DeAngelis' prior business reputation?

A Yes. I had heard that he had been involved in a bankruptcy of a meatpacking house.

Q Did you hear how that had come about?

A No.

Q Did you hear it had anything to do with futures trade?

A No, I did not.

Q Had you heard that Mr. DeAngelis had gotten into trouble with the Internal Revenue Service?

A No, I did not.

Q Had you heard that he had been charged by the Securities and Exchange Commission that a company with which he had been associated had understated its loss in a report to stockholders?

Q Had you heard that Allied had been accused of selling rancil oil to Spain?

A Yes, I remember that.

Q What do you remember about that?

A I remember reading in the trade reports that a complaint had been made about the rancidity of the oil or some quality aspect of it.

Q Did you know or had you heard that DeAngelis had been suspended from the Chicago Board of Trade?

A Yes, I knew that.

Q Did you know why?

A I think it was -- the charge was wash sales, but I'm not sure.

Q Do you know what a wash sale is?

A Yes. It is a fictitious sale.

Q Did it occur to you when you heard that that any of DeAngelis' trades on the Produce Exchange might have been fictitious trades?

MR. O'DONNELL: Objection, your Honor. Mr. DeAngelis was not on the New York Produce Exchange and was not a member --

THE COURT: Objection sustained. It has been established that he was not a member of the Exchange.

Exchange verified or at least had a procedure that the ex-pitters had to comply with.

Q Did you know what that procedure was in 1963?

A I believe they had to write letters to the secretary.

Q Was there anything else?

A They had to declare whether it was done pursuant to one particular provision of the ex-pit rule or another.

Q Was there any other documentation required besides a letter to the secretary?

A There may have been, but I didn't know about it.

Q Have you ever heard the term bidding the board?

A Bidding the board, no.

Q Or fixing the price for an export contract?

A Yes, that I have heard. But bidding the board was not a term that I'm familiar with.

Q Do you recall that during August the clearing association increased the margin on the near month contract, the September contract?

A During August?

Q Yes, 1963.

A Yes.

Q Did you know why that was done?

A I don't remember especially why that was done in August of 1963, but I do know that it is done to discourage speculation in the delivery month.

Q Had that been done before in 1963?

A Yes, I think it had been done.

Q Did you ever make any inquiry as to why it wad done in August of 1963?

A No, I didn't make any inquiry because I thought I knew.

Q Do you recall a meeting with Mr. Weinstein and Mr. Boyer in September of 1963?

A I do.

Q Do you recall who was present at that meeting?

A Mr. Berg, Mr. MacDonald, I believe.

Q And yourself?

A And myself.

Q And Mr. Weinstein and Mr. Boyer for the

clearing association?

A Yes.

Q Do you recall what was discussed at that meeting?

A Mr. Weinstein told us thatthe clearing association had some concern about some concentration on the books of some clearingmemebers and suggested that he would like to see some kind of an increase in the margins. I don't remember whether he spoke about a scaleup of margins. That was rather left for the further development. But he felt that that was the way to deal with this condition.

Q I'm sorry. Have you finished your answer?

A No, I'm still thinking.

Q I'm sorry.

A He asked us whether we would go along with his thinking on the subject, and I'm pretty sure we said yes, we would go along if he thought it was necessary, the exchange would follow along. I think we had to go along,if I'm not mistaken.
I think they set the margins and we could not set a margin lower than theirs. So that we had no objection if he thought that was necessary.

gr7 Fashena-direct [2544]

Q Have you finished now?

A Yes, sir.

Q Was anything said about ex-pit transactions during that meeting?

A I don't remember. I don't think so.

Q Was anything said about why the clearing association was concerned?

MR. O'DONNELL: He just testified to that, your Honor.

THE COURT: He said because Mr. Weinstein's concern about the concentrations and clearing members. He said that.

MR. KIRSCH: I'm sorry. I didn't frame it properly. your Honor.

Q I'm now asking you: Did Mr. Weinstein say why he was concerned about this increase in concentration or what was it about this increase in concentration that gave rise to the concern?

THE COURT: All right.

A I'm not sure, but I think he was saying -- I think he was saying that a big fluctuation in the price would require the payment of a large sum of money.

Q Is that a subject of concern, that someone

will have to pay a large sum of money if there's a large fluctuation in price.

THE COURT: I don't understand that question. He said he thought Mr. Weinstein's reason for the concern about the concentration was because he felt that somebody would have to pay a large amount of money if there was a big fluctuation in price. Mr. Weinstein was concerned about that.

I don't know what your next question means.

MR. KIRSCH: I'm sorry, your Honor. Let me ask another question.

5A

elr1 Fashana-direct [2546]

Q Did Mr. Weinstein say anything about whether whoever it was that would have to pay a large sum of money would have the financial ability to do so?

A No, he didn't.

Q Were you concerned about this at all, this concentration in the hands of a few clearing members?

A No, I was not concerned, and I thought that the increase in the margin was a sensible approach.

Q Did you think it significant as a member of the board of managers that Mr. Weinstein, who was the president of the clearing association, was concerned?

A Well, I thought that Mr. Weinstein's concern was dealt with by his proposal to increase the margin. And once the margins were increased I felt that the concern, that the problem had been approached intelligently.

Q At the October 3rd meeitng of the board of managers --

A That is this meeting?

Q I believe that is the one you have in front of you -- is that one you have in front of you.

A October 3rd.

Q Did you advise the board of managers of your meeting with Mr. Weinstein and Mr. Boyer?

A No, I did not.

Q Did Mr. MacDonald?

A I can't remember. I haven't read these minutes for something like 12 years, so I don't know what's in them.

Q Would you like to look at them?

A I don't want to take the time of the Court to read --

Q I don't think there is anything in them about this subject.

THE COURT: You don't have to take the time up. Let's proceed.

Q You don't recall any discussion?

A No, I do not. Might I mention this, that Mr. Weinstein and the clearing association would not have had to come over to the exchange to tell us about this.

MR. LIMAN: Is it clear what the "this" refers to in the last answer, your Honor? I don't know what the question was; I therefore don't know the antecedent for the "this."

THE COURT: I think everything -- why don't you tell us. I assumed that the "this" was about the conversation that they had with Mr. Weinstein at the meeting they had with Mr. Weinstein. Is that what you are referring to?

THE WITNESS: Yes, I was referring to the fact that Mr. Weinstein and the clearing association could have raised the margins and we would have had to follow suit.

Q Did you think the board of managers had a duty to investigate why Mr. Weinstein had indicated concern about concentration?

THE COURT: I think that Mr. Fashena has answered that question. He said that in his judgment the problem that Mr. Weinstein raised was taken care of by raising the margin and therefore he felt the problem was taken care of.

Q Do you recall a meeting on November 14, 1963 --

A Forgive me, but could you please speak a little louder?

Q I'm sorry.

Do you recall a meeting on November 14, 1963?

A November 14, 1963, yes. The dates get a little foggy, but I think I remember which one that is.

elr Fashena-direct [2549]

MR. O'DONNELL: Your Honor, may I bring the calendar up.

(Pause)

MR. O'DONNELL: This is an allegedly duly authenticated calendar.

(Pause)

THE COURT: You should markthe 14, 15, 16, 17, 18 and 19 in red.

Q Before we get to that, let me show you two exhibits which are already in evidence, Plaintiff's Exhibits 27 and 28 which are the letters to Mr. MacDonald from Mr. Weinstein, and ask whether you have ever seen them before.

(Pause)

A No, I have never seen these letters before.

Q Let me also show you Plaintiff's Eshibit 29 in evidence which is the letter from Mr. Boyer to Mr. MacDonald, noting that the clearing association has adopted a scaleup margin roughly about that?

A I had never seen the letter of October 9, this letter. But this is I presume the decision of the clearing association notifying the produce exchange that there was a scaleup margin to be put into effect. Not this particular letter, but the

substance of it was posted on the floor of the exchange.

Q Did you see Plaintiff's Exhibit 30, which is a letter sent to all clearing members?

A Yes. This is the one that I saw. I did not see this one, I saw this one.

Q You saw No. 30?

A And this was posted on the floor of the exchange.

Q Did you notice anything unusual about the scaleup margin that had been adopted?

A Yes. What I found unusual, which I found reassuring as well, because the word unusual trips me up, was the fact that the scaleup margin going into effect five weeks forward, instead of immediately.

Q Why was that reassuring?

A Because it signified to me that there was going to be enough time to make the necessary adjustments which I expected to be made.

Q What adjustments were those?

A The liquidation or distribution of the concentration in the positions.

Q During the period from October 9 or 10 when that notice came out until the meeting of the board on November 14 did you see any evidence that there was a

situation, at the meeting on November 14th?

A I think concerned is a little bit too strong a word to describe my attitude. I was very much interested. I don't think I was concerned in the sense of being alarmed because I felt we had enough ways of dealing with a position of concentration; and that we could cope with it.

Q What were the ways you had of dealing with a position of concentration?

A Margins. We could have declared that particulare options would be open for liquidation purposes only; we could have instructed the member holding the concentrated position to distribute his position to others. I think that is what this meeting was all about. I think that meeting was for the purpose of giving the Board the opportunity of finding out exactly who had what and what to do about it.

Q Couldn't you have gotten the information about who had what by calling the Clearing Association?

A We could have, yes.

Q But you didn't do that?

A No, we didn't do that.

Q Instead you appointed a Control Committee to go out and circulate all the clearing members?

A Right.

Q Turning to the ways of dealing with the situation, you said margins. Hadn't the Clearing Association already imposed --

A Forgive me, I didn't hear you.

Q I'm sorry. Turning to the ways of dealing with the situation, you mentioned margins. Hadn't the Clearing Association already imposed margins, additional scale-up margins?

A It could be increased even further.

Let me look at the dates, please, so by this time the scale-up margin had not gone into effect, on the 14th.

Q Look at Exhibit 30.

A The 15th. So the scale-up margin was going into effect the next day.

Q That's right.

If the increased margins were going into effect the next day, then presumably increased margins were not being considered as an additional way of dealing with the situation?

MR. O'DONNELL: I object to that, your Honor.

THE COURT: That is argument. Objection sustained.

Have you reviewed that document now?

A Yes, sir.

Q You have never seen it?

A No, I have never seen it.

Q Do you know what it shows? Does it show open positions?

A Yes, it shows the positions of longs and shorts by delivery month, by customer.

Q And the customers are the traders that you are referring to?

A Right.

Q And it shows who had the concentration of interest among the traders?

A That is correct.

Q Had you known that piece of paper was in Mr. Berg's possession, would you still have voted for a Control Committee?

MR. O'DONNELL: Your Honor, I object to that. It is hypothetical.

THE COURT: All right. The objection is sustained.

Q Doesn't that piece of paper, Plaintiff's Exhibit 1, have the information on it that you thought the Control Committee was going to get?

A Well, I would have wanted in addition to this who the carrying brokers were.

Q Could you have gotten that by calling the Clearing Association?

A I would guess so.

Q One telephone call; is that right?

A The information could have been gotten from the Clearing Association.

Q Yes, sir. Thank you.

After the meeting of November 14th -- was it an evening meeting, do you recall, or an afternoon meeting?

A I think the November 14th meeting was an afternoon meeting.

Q I'm sorry.

Before we leave the meeting itself, you do recall that a Control Committee was appointed at the meeting?

A This was a very confusing meeting and I don't remember truthfully. I knew that a Control Committee was appointed, but I never really knew who the members of the Control Committee were because there was so much discussion. I don't even remember whether these papers were ever ratified by any subsequent Board

who were on the Committee, who had been appointed, knew who they were?

A No, that's just the point that I'm making. I know that these minutes that you have shown me or these papers that you have shown me are inaccurate because I remember distinctly that Harry Anderson was not on the Committee and this says that he was, if I'm reading it right.

Q Why do you remember distinctly that he was not on the Committee when you don't remember distinctly who the other members of the Committee were?

A Because I don't know who replaced him.

Q How do you know he was not on the Committee?

A Because he said he couldn't serve.

Q You remember that?

A That I remember.

Q Do you remember anybody else making any satatements about whether or not they could serve?

A Yes, I remember one-- I remember the name of-- somebody by the name of Doaks who I don't know, with Lever Brothers, and there was objections to him.

Q Was he at the meeting?

A No, he was not at the meeting. I never met him. Walter Klein, I know he wasn't on the Control

A Right.

Q That's the day of the meeting; is that correct?

A That's correct.

Q Then the next day what was your net position?

A On the 15th we were short 11.

Q Net short 11?

A Net short 11.

Q So the day after the meetingyou increased your short position from 1 to 11 contracts; is that right?

A Right. On the 18 we were even again, long 11, short 11.

Q So that's the day you covered your short position, Monday?

A Monday, which is what?

Q The 18.

A The 18, Monday. This was Thursday?

Q That's right.

A Thursday we were short, Monday we were long --

Q I'm sorry. Thursday you were short, Friday you were shorter --

from the clearing association, attorneys. There were other people there. Oh, there were people from Ira Haupt, there were people from Williston & Beane. There may have been some attorneys, too. I don't remember.

Q Do you remember the purpose of the meeting?

A Yes.

Q What was that?

A At that meeting we were told -- we were told that Allied had declared -- they are declaring or gone bankrupt or something or other like that in the morning, and that they couldn't meet their obligations, the position they held with their clearing brokers. I think their clearing brokers were Ira Haupt and Williston & Beane. Ira Haupt and Williston & Beane had been trying to find other buyers for their position and they could not -- that if they couldn't find buyers for their position and distribute it to others, they would not be able to meet any substantial calls from the clearing association. I think substantially that's what I can remember of that meeting.

Q Did they go into any detail about what efforts they made to find buyers for their position?

A I think they did. I think that there had been a -- there had been a strong effort made by brokers to find buyers for the position and Ira Haupt had done everything -- they went around to a number of clearing members to see if they couldn't sell their holdings to other people.

Q Sell their holdings to other clearing members?

A To other clearing members or to other trade interests.

Q Would selling their position to other clearing members have solved the problem of Allied's bankruptcy?

A No, it wouldn't have solved the problem of Allied bankruptcy. It might have solved the problem of Ira Haupt.

Q How is that?

A Well, they wouldn't be subject to additional calls from the clearing association if they had managed to move their position to another house.

Q Would the other houses have been subject to margin calls?

A Depending on what the market did. The market could have gone up.

Q Did you think it was likely that the market would go up?

A Yes.

Q You did?

A Yes.

Q On the 19th?

A Yes.

Q Why did you think the market was going to go up on the 19th?

THE COURT: Is this relevant?

MR. KIRSCH: I think it'svery relevant, your Honor, in light of the way they ultimately determin[illegible]osing out contracts at the lower price.

MR. LIMAN: Your Honor, is he being asked whether he thought on the 19th that the price would go up thereafter or is he being asked whether he thought that on the 19th the price would have gone up? In other words, on an earlier date that the price would have been higher on the 19th? I think it's all irrelevant. I don't understand what the question is.

THE COURT: He's talking about a meeting on the 19th in the afternoon. I gather there were meetings in the afternoon. Were they while the market was open?

THE WITNESS: No, after themarket, your Honor.

THE COURT: We are talking about sometime after that.

Q Is this the meeting at which it was determined to liquidate the contracts?

A Yes, I dhink so.

Q This is the meeting at which the liquidation prices were set?

A That is correct.

Q At that date, at that meeting you thought it was liekly that from then o n prices would go up, not down; is that right?

A Well, I thought that the prices had reached a level where they could make substantial recovery. It looked good to me.

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elr Fashena-direct [2579]

Q At that meeting did you vote to close out the contracts?

A I did.

Q And you voted to close them out at the prices that were set?

A I did. But I particpated in the construction of the formula.

Q Why don't we go into that. How was that formula constructed?

A Well, we had the problem of trying to be fair not only to the suffering longs, but to the short side of the market, who had made commitments in good faith on theexchange and would find themselves the next morning without the hedges that they thought they had. The market for cottonsced oil, if I remember accurately, had been put under limits, trading limits, and I think that the market had fallen under the trading limits that we had given it, something like -- please don't hold me to this, because I don't remember exactly, but it had fallen about a cent, maybe a cent and a quarter; whereas the sister market, the soybean oil market which moved more or less parallel with the cottonseed oil market, but at a difference which was fairly,not always, but fairly constant, had

elr Fashena-direct [2580]

not restricted its activities, its speculative limits.

And therefore we looked for guidance to the soybean oil prices as of the close ofthe 19th, I guess. I think it was the 19th.

Q Yes.

A Wo we said, well, cottonseed oil -- the soybean oil price had fallen, let us say to 9 cents or 10 cents, to make it easier; and the ruling differnce between crude soybean oil in Decatur and once refined cottonseed oil basis New York was about a cent and a half or 2 cents.

Q When you say ruling difference, you mean the average differential?

A The difference that had been in normal times or recent times, ruling between crude soybean oil and once refined cottonseed oil.

So we took the closing price of the soybean oil, added upon the premium for the cottonseed oil, and declared that the settling price.

Q Were there any other factors taken into consideration?

A I think that was the formula. That was as I understood the formula.

Q Do you think that the efforts that Haupt and the other brokers had made to transfer or liquidate their position had an effect on the price of soybean oil?

A Yes, it must have had an effect on soybean oil.

Q What effect would it have had?

A It would have had the effect of further lowering the price of soybean oil.

Q Because this was distress merchandise, in a sense, is that right?

A That is correct.

Q And the fact that these contracts were going to be perhaps dumped on the market would have had a substantial effect on the price?

A It's hard to say because I think there were buyers lurking in the woods.

Q They weren't coming out of the woods, were they?

A They weren't coming out of the woods, but they were there. There was buying interest.

Q In any event, it had the effect of lowering the price.

Did you take thatinto consideration in

setting the closing prices?

A Yes, I think we did. I think we took it into consideration, but couldn't find a better formula that would be more equitable. As I said, we tried to be equitable in how these contracts would be settled out.

Q How did you take it into considreation? Did you adjust the ruling difference somehow?

A No, we tried to use the ruling difference as it existed. As a matter of fact, it never occurred to me, but that ruling difference -- the ruling difference benefitted cottonseed oil.

Q How was that?

A Because it was a difference that existed without distressed merchandise being thrown on the market. Conceivably, if cottonseed oil had been thrown on the market, that ruling difference may have narrowed.

Q Did you know that Haupt and Allied had- a position in soybean oil as well?

A No, I didn't.

Q Did you assume they did?

A I didn't think about it.

Q Did you know what Allied's business was?

A I knew what Allied's business was, yes.

Q Did they use soybean oil as well as cottonseed oil?

A They used soybean oil as well as cottonseed oil.

Q Didn't you assume from that that they would have been hedging their soybean oil commitments in Chicago?

A Well, in truth, that thought didn't occur to me at the time.

Q So no consideration was given at the meeting as to whether the price of soybean oil was lower than itmight otherwise have been because of Haupt and Allied's soybean oil position, is that right?

MR. O'DONNELL: Objection, your Honor, as to what --

THE COURT: Mr. Kirsch, you are getting me confused.

MR. KIRSCH: I'm sorry, your Honor. Let me reframe it, or try it.

Q Was any consideration given in determining the closing price for cottonseed oil futures as to whether or not there had been distress selling of soybean oil futures?

A I don't remember any consideration given to that aspect.

Q Do you think the fact that Allied had filed forbankruptcy had an effect, that fact along, the filing for bankruptcy, had an effect on the soybean oil market?

A Yes, I dhink so. I think the effect would be that buyers would tend to back off and stand aside, to see what would happen.

Q And if buyers backed off, does the price go down?

A Yes.

Q Was consideration given to that fact in determining the settling prices of cottonseed oil futures?

MR. O'DONNELL: Objection, your Honor. This is the same line of questions that we just had a few minutes ago. The same question.

MR. KIRSCH: Your Honor, last time I asked about the fact of Haupt's distress selling, and now I am going into the fact of Allied's bankruptcy.

THE COURT: At least that question I can comprehend a little better, so the objection is overruled.

elr Fashena-direct [2585]

THE WITNESS: Would you repeat the question, please?

THE COURT: Did Allied's bankruptcy, when you said Allied's bankruptcy had some effect on the price of soybean oil, and you said it was the fact that it would be lower, was that a consideration in the meeting of the 19th in the setting of the settling price? Am I stating it correctly?

MR. KIRSCH: Yes, sir.

MR. O'DONNELL: Your Honor, I'm not clear as Mr. Kirsch asked the question whether he was asking this witness what he thinks about it now or what he was thinking about it back on November 19, was he giving it any consideration at that time.

THE COURT: I think it's pretty clear that he is asking him what went through his mind and the minds of those people who were settling the price on the 19th, 1963. I don't think there is any problem about that.

Q That was my question.

THE COURT: You have been answering it as you regarded it in '63, haven't you?

THE WITNESS: Yes, sir.

THE COURT: All right.

elr Fashena-direct [2586]

A I thought it was imperfect, but equitable.

Q Would you answer the question as to whether you considered this particular fact?

A No, I did not consider that particular factor.

Q Was there any discussion of that factor at the meeting?

A No, there was not, that I can remember.

Q Did Mr. MacDonald state at that meeting that he had been told by Mr. DeAngelis that a decline of either 10 points, or an eighth of a cent, something along that line, would finish DeAngelis?

MR. O'DONNELL: Could I have that question read, your Honor?

THE COURT: Yes.

(Question read)

MR. KIRSCH: I withdraw the question.

gwrf 6 [2600]

When the two Superintendents employees, Superintendents being the surveyor which has been previously referred to -- when they arrived at the Harbor Tank facility and asked to examine tank X and Y, two different tanks in which the oil against which they made a loan and had gotten receipts were supposedly stored, they were prevented from examining those tanks by the Harbor Tank custodian, whom it is alleged brandished a weapon and told them under no circumstances could they come in that day to examine the tanks; there had been some mixup; they had better go see the Allied people in the adjoining premises.

Subsequently, the two Superintendents employees went over to Allied and asked to see Mr. DeAngelis to get an explanation of what was going on, why they were being prevented from performing their duties of examining the tanks to ascertain the existence of the quality and quantity of oil described in the warehouse receipts.

THE COURT: I really don't think I need so much of that.

Get down to the bottom line.

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[2601]

MR. STANTON: The nitty-gritty, your Honor, is that DeAngelis presented one of the superintendent's employees with a check for $25,000, told him to come back tomorrow, we'll have the figures for you, everything is going to be straightened out.

This was reported back by the superintendent's employee to its supervisor who in turn arrived the next morning at the offices of Bunge, met with Fornari, told him the story of the preceding day, Fornari went into Klein's office, told Mr. Klein what he had just heard from the superintendent's executives and the employees, Fornari and another jumped into a company car, went over to the Allied facilities, completely circumvented the Harbor Tank storage place and went in to see DeAngelis to find out what was going on.

DeAngelis explained to them there had been a mixup, it was all straightened out, but there was such a quantity of business going on, such large quantities of oil coming in and going out, somebody had slipped up.

He said, even if you are really worried, I have plenty of free oil in American Express, they are much better. You go satisfy yourself there's planty

gr2 [2602]

of oil there and I will then in turn arrange a program where I will exchange all of the Harbor Tank receipts that you are holding, that you don't like, for the good American Express receipts.

THE COURT: All right.

That was done?

MR. STANTON: That was done. Fornari came back, reported to Klein that night. The next morning an entourage of the chief executives of Bunge left my limousine from downtown New York City, went out to Allied.

At that meeting Bunge through its president protested loudly, they were very upset at this situation, they didn't see how something like this could happen.

THE COURT: I don't think I need all that.

MR. STANTON: We are coming now to the crucial thing, your Honor.

At that meeting it is DeAngelis' testimony that he told Bunge officials in that room thathe had been suffering through this situation long enough, that Bunge was tightening up so much and causing him to pledge so much additional collateral that he couldn't operate, he was $7 million short of oil, the whole thing was a charade and the house of cards should come

gr3

tumbling down, and there was only one way that he could save this situation, if Bunge and superintendents kept quiet and made sure that this story didn't get out, he had come up with a program overnight where over a period of approximately ten days he would take back all of the Harbor Tank receipts then held by Bunge and arrange to replace the Harbor Tankreceipts with American Express where house receipts in which Allied claimed he had sufficient free oil to cover the quantities that Bunge was holding.

THE COURT: All right.

MR. STANTON: That in essence -- and subsequently there will be testimony that Mr. Klein called off the survey which he had ordered on the 26th. That survey was never completed.

When Salmonowitz returned to get instructions as to what should be done, Salmonowitz's testimony was he was told to forget about it and that Mr. Klein didn't want this thing broadcast around.

It's within that framework that we allege that Harbor Tank, those warehouse receipts, it was foreseeable that they would come into the hands of third parties and that the traffic in fraudulent warehouse receipts would continue after Bunge arranged

gr4 2604

to return the Harbor Tank warehouse receipts --

THE COURT: I understand that. We are on the second phase, and those are the issues that you raised in your complaint in your action in New Jersey.

MR. STANTON: There were ten causes of action.

THE COURT: I have your brief here, which I gather page 35.

MR. STANTON: I haven't read the quotation, your Honor. I'm sorry. I didn'thave time. Page 35 of our brief?

THE COURT: Yes. You are of counsel on the brief, Mr. Stanton.

MR. STANTON: Yes, I was, your Honor.

THE COURT: Normally what of counsel means is that you wrote the brief. That's in my experience.

MR. STANTON: I did participate in the preparation of the brief, your Honor, together with our Jersey counsel.

THE COURT: It is evident you say if Klein had informed New York Produce Exchange, it too would have carried out its duties and investigated. As manager, as a member on the board of managers, Klein

owed a fiduciary duty of honesty, good faith and diligence to the New York Produce Exchange and its members, one of which was Haupt, and that his failure to disclose that vital information was a breach of his duty to Haupt.

MR. STANTON: That is an accurate quotation, your Honor.

THE COURT: What different point are you raising here?

MR. STANTON: This was not a separate cause of action in the New Jersey proceeding, your Honor, not an allegation of the complaint in the New Jersey action.

THE COURT: Not an allegation of the complaint? You mean because it wasn't an allegation and the basis of the theory upon which you pursued it, that you are now saying you can now raise the matter again?

MR. STANTON: We didn't allege a cause of action under failure to regulate the produce exchange in the New Jersey State Court action, your Honor. True, certain of the underlying facts which were alleged in the Jersey action might become relevant and material in connection with this litigation here in this court.

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[2606]

THE COURT: But in some aspect of the New Jersey action, whether you allege it as a primary cause or not, you are indicating that either it was a tort or -- I don't know --

(Continued on next page)

2A elr1 [2607]

MR. STANTON: Precisely, your Honor. That is exactly what we are alleging a tort.

THE COURT: But you are alleging that his failure to inform, to carry out his duties as a member of the New York Produce Exchange was tortious, as far as you are concerned. What difference does it make if you change that to some other form here?

MR. STANTON: Your Honor, I submit that a separately stated federal cause of action based upon a defendant's or a group of defendants' failure to exercise its statutory duty to regulate a commodities market, to preserve orderly trading and the like as a substantially different cause of action and a cause of action for prima facie tort in a New Jersey State action where among other things one of the allegations is that the -- one of the individual defendants had a duty which inferentially would have come back to the benefit of the plaintiff in the Jersey action if he had carried out his duty.

And, your Honor, if I may -- I'm sorry --

THE COURT: I understand that. As a matter of fact, if I didn't understand that, you'd be thrown out of this Court on the matter that is before me.

I understand that you are not bringing

elr2 [2608]

the same cause of action in that these matters that you are alleging here aren't the same cause of action.

The issue that I am concerned about is having brought the action and having settled it, can you now use these facts that you now settled, etc., can you use those facts as a peripheral matter in this case. That is what the issue is.

It's an entirely different one than the one you are addressing yourself to.

MR. STANTON: Your Honor, I believe that under the authorities that we have cited to your Honor in our brief, and I am referring now to the Woodbury v. Porter action, and Household Goods Carriers Bureau v. Tirrell, the Court has specifically found that identical facts may give rise to many different causes of action.

THE COURT: Again we are not talking about the same thing.

MR. STANTON: I misunderstood your Honor's question, I'm sorry.

THE COURT: I recognize that. Otherwise what would happen, as I said, Mr. Stanton, you couldn't be here.

But the point that I am raising is that

elr [2609]

having now sued these people, not under the same cause of action but on the basis of facts that you got at some sort of settlement and accord and satisfaction, etc., the issue now is, can you use those precisely same facts that you have signed and agreed and settled the controversy with them, in this case?

MR. STANTON: I submit we can, your Honor, because of the fact that this is a completely different cause of action thathas been alleged before your Honor in this Court.

I believe that he underlying facts may be identical in several different causes of action, but give rise to very meaningfully different causes of action in different jurisdictions, some in the state courts, some in the federal courts.

I believe also here you have a question of the foreseeability of Haupt receiving these warehouse receipts based upon the fact that Bunge knew from Allied itself that if Bunge did not continue to finance Allied, that Allied intended to seek financing assistance from Haupt.

THE COURT: How do you propose, now tell me, how do you propose to get that information before

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the jury?

MR. STANTON: Through the testimony of Mr. DeAngelis --

THE COURT: What is he going to tell us?

MR. STANTON: He is going to tell us of his transactions with Bunge overthe years, his financing arrangements with Bunge, what the nature of those financing arrangements was, Bunge's knowledge of his position, the guaranteed profits that went to Bunge, the lo g-range forecasts that Allied gave to Bunge about his plans for the future, things of that nature, your Honor --

THE COURT: Don't tell me things of that nature.

MR. STANTON: Even he is going to get into discussions he had with Bunge officials in 1962 concerning his financial position and shortage of oil, his issuance of invalid warehouse receipts and the circulation of those receipts within the trade.

And the fact that Bunge knew from that time forward that he was in a deficit position and that the warehoue receipts he was issueing could not back up the oil that he claimed and that on subsequent transactions as between Bunge and Allied, Bunge knew

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[2611]

that Allied was continually losing money on each and every transaction that took place between Bunge and Allied, while statement guaranteeing Bunge a profit and paying them interest on the loans that Bunge gave to Allied to purchase the oil that he was selling back to them at a favorable price.

THE COURT: All right. I will hear from you.

MR. FRYER: I'd like to start by answering a question that your Honor asked Mr. Stanton to use they claimed Bunge and Klein had a duty to disclose the Harbor Tank incident.

THE COURT: Excuse me, have you got a copy, a full copy of the terms of settlement?

MR. STANTON: Yes, your Honor. We have the stipulation right here, your Honor (handing).

THE COURT: All right, Mr. Fryer.

MR. FRYER: In addition to the people that Mr. Stanton mentioned, their complaint also adds, and I quote, "Appropriate private organization invested by law with self regulatory responsibilities."

That appears in paragraph 20 and 22 of their complaint in the Harbor Tank action.

Actually, I think the best evidence of what their claims were in thataction is the brief which I

elr [2612]

handed your Honor, and I didn't quote all of it in our brief, and I submit it's all very pertinent in fact, I just realized last night that in the brief that the plaintiff's have submitted in this case on this issue, when they talk about how the Harbor Tank incident is relevant in this case they use some of the exact words and cases and produce exchange by law as they use in their Harbor Tank brief. It's almost taken word for word.

And I submit, your Honor, that it is conceded that it's the same issue. Their brief makes it clear they are talking about the same duty.

They are citing the same cases and they are making the same arguments, and the settlement stipulation says, and I quote:

"Bunge shall pay to the Haupt trustee the sum of $750,000 in full and complete settlement, discharge and satisfaction of Bunge and Klein of and from any and all claims or causes of action asserted by him against Bunge and Klein in the Harbor Tank action."

Turning to the relevance argument, your Honor --

THE COURT: The release seems to say the

elrf 7 [2621]

of Haupt's receipt of false warehouse receipts is an issue for trial, I don't see how we can be precluded from an opportunity of putting in proof on the meat of that issue, because it is the defendants who raised the issue.

THE COURT: I must say that I had the view that I was going to be required to allow at least some kind of evidence on this question. The fact that you raised this issue in New Jersey and adding to the other complications in the trial before.

MR. FRYER: I would like to just add one other case which I found just last evening. I apologize for bringing it up so late. But it is a good case I think on balancing relevance against prejudice and undue complication of the trial. It is the Belmont --

THE COURT: If it is a question of my discretion, et cetera, I can deal with that fairly well. 403 I suppose is pretty clear on that. But give me the cite.

MR. FRYER: I will give it to your clerk so he can make copies, and I will give a copy to Mr. Stanton.

THE COURT: I will think about it for

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2623

(In open court; jury present)

S I D N E Y F A S H E N A resumed.

THE COURT: Mr. Fashena, you remember you are still under oath.

You may proceed.

CROSS-EXAMINATION

BY MR. O'DONNELL:

Q Mr. Fashena, are you aware that you are a defendant in this action, sir?

A I am.

Q Mr. Fashena, for how long have you been in the commodities business?

A I have been in the commodities business since 1938.

Q During the years from 1938 did you spend any of your time on the New York Produce Exchange floor?

A I spent most of my time on the New York Produce Exchange floor.

Q Except for vacations and any family illnesses were you on the floor about every day during the 25 years up to and including, 1963?

A Yes, I was.

Q You have continued since '63 in the

commodities business so that you have been in the fore, on a full-time basis, for almost 40 years, is that right?

A That is right.

Q Is trading in markets in edible oils, including soybean oil and cottonseed oil a specialty of yours?

A It is.

Q Was it in 1963 and prior to 1963?

A It was.

Q For how long have you been amember of the New York Produce, or were you a member of the NEw York Produce Exchange?

A I became a member of the New York Produce Exchange in 1938, and have held my membership continuously until the produce exchange became the International Commercial Exchange. Held my membership in the International Commercial Exchange, and that became associate member of the New York Mercantile Exchange, and I am now a member of the New York Mercantile Exchange.

Q But the New York Mercantile Exchange is not the old New York Produce Exchange?

A No.

Q Have you at any time been a member of the Chicago Board of Trade?

A Yes, I was a member of the Chicago Board of Trade from 1956 until 1974.

Q You were a member of the board of managers of the New York Produce Exchange, were you not, in 1963?

A I was the treasurer of the exchange in 1963.

Q And you were also a member of the board of managers, were you?

A By virtue of being an officer.

Q For how long had you been on the board of managers of the New York Produce Exchange?

A The exact date, I don't remember, but I think it was from the early '50s until 1965 or 1966.

Q And you told us that you were on various committees also, were you not, in 1963?

A Yes, sir. As a treasurer I was automatically on the executive committee, and on the business conduct committee, and I was also on the publicity committee, and if I am not mistaken, a new products committee.

Q Did you receive any compensation for acting as treasurer of the New York Produce Exchange in 1963?

A No,sir. The officers and members of the board contribute their services.

Q So you contributed your services not only as treasurer but as a member of the board of managers and as a member of each of these committees you have told us about, is thatright?

A That is right.

Q In 1963 as you were on the floor ofthe New York Produce Exchange on a daily basis did you observe any corner of the cottonseed oil futures market during thatyear, sir?

A No, I did not.

Q Did you observe any squeeze of the oil market in 1963?

A No, I did not.

Q Did you observe any manipulation of the cottonseed oil market in 1963?

A No, I did not.

Q Did you observe any attempt at corners, squeeze or manipulation of the market in 1963?

A No, I did not.

Q When you say you didnot observe any corner, can you tell me why you are so definite about that?

A Well, I am definite about that because I was

watching the prices very closely,and the prices were not reflecting any indications that anyone was controlling the supply of cottonseed oil.

Quite the contrary: the structure of the market was such that the nearby deliveries and the cash oil were selling at a discount under the future. And that would conclusively indicate to me that the supply was comfortable, adequate, and not being forced upward.

Q Why were you so definite in your answers to me that you didn't observe a squeeze? Is that for the same reason, sir?

A Largely.

Q Why were you so definite you did not observe any manipulation or attempt at manipulation?

A The market price action is the essential aspect in the study of whether a manipulation is taking place.

I must say that as a member of the board of managers, and I believe all the members of the board knew this, we were very well aware of what our responsibilities were. The rules of the exchange were very specific. The rules of the Commodity Exchange Authority under which we operated were very specific,

Q And you didn't report any such thing in 1963?

A Exactly. I did not report it.

And I'd like to say in view of the questioning, that when a member of a board or a member of an exchange is observing a market, he is speculating because you cannot know, and you speculate through experience, through knowledge, thorugh hard knocks, and you begin to sense when a price movement is normal and when a price movement is abnormal. And I can't tell you how you sense it, but you do.

Q All right. Is it right, Mr. Fashena, that you spent your time in 1963 and prior thereto in the commodities futures business doing market analyses work with respect to that product.

A Exactly.

Q And that has been your business, to analyze price movements in the market, both in 1963 and prior to 1963?

A That is correct. And my analysis was principally based upon developing a plan of trading.

Q All right. Now, you have mentioned a few moments ago about the supply of oil. What did you observe about the supply of oil in 1963?

A In 1963 we knew from the United States Department of Agriculture, through a series of forecasts, that the supply of cotton was going to be somewhere in the area of 15,500,000 bales. We knew that that size crop would produce a supply of cottonseed of somewhere between five and a half and six million tons of seed.

We knew that the five and a half million tons of cottonseed would produce somewhere in the area of 30 to 35,000 tanks of cottonseed oil.

We also knew that that crop was being

harvested beginning in July and moving to the ginners and moving to the crushers and moving to the refiners in a steady flow; reaching its peak in October and November.

So that we could not anticipate anything but very liberal supplies of oil coming to the market. We also knew from the Department of Commerce and we knew this each month, that the mills were reporting their stocks of crude, refined, and seed. And by the end of October, normally, since the cottonseed cannot be stored for a great length of time, we knew that approximately half of that supply of cottonseed was in the hands -- had been crushed or was in the hands of the factories for processing, either in the form of oil or in the form of seed.

From what they had on hand and reported, and what the Department of Agriculture was estimating as the total crop, we knew that half of that supply, -- which was not reflected in the figures of supply, was in the country, still to come.

So that in October -- and I might say that it was not only October of 1963, but any October -- you knew that the supply of cottonseed oil was ample.

Q And did you know that there was some holdover

oil from 1962?

A Yes, there was a carryover.

Q Another term that you used a few minutes ago, you said members, something about speculation. But a hedger in the market or a speculator in the firm, you and your firm, I. Usiskin.

A I and my firm were speculators.

Q Are speculators necessary to a market, as well as hedgers?

A I believe they are very important because the speculator provides the liquidity, and by liquidity I mean we are prepared to take the opposite side of what the hedger or what the trade wants to do regularly, and are willing to offset our operations for small profits.

Q And therefore, the speculators provided a place for the hedgers to find people to do business with?

A That is correct.

Q Will you tell us what kind of speculative trading you or your firm, I. Usiskin Company did in 1963 in terms of the year? I think you mentioned some of it yesterday, but just give us some of the dimensions of that trading.

A Well, we were a small house. Our activity on a day to day basis involved perhaps the purchase of 20 or 30 contracts of cottonseed oil and the sale of 20 or 30 contracts of cottonseed oil. And we had at the end of each day no more than a net position of 20 lots. By net position, I mean either net long or net short, and we may have had a straddle position of 20 or 30 lots.

Q You used the term straddle position several times, once today and once yesterday.

Will you tell us what a straddle position is?

A Well, as you know, the contracts which are posted on the board and traded call for the delivery of oil, a specific quantity, 60,000 pounds, by certain months; March, May, July, September.

I am giving you that as an example. A straddle would be the purchase of a March on the sale of a May; or the purchase of a May and the sale of a July.

So that you had no net position, because you were long and short the same amount of contracts, but in different delivery months.

Q Returning to this subject of corners, squeezes or manipulations, you were asked by Mr. Kirsch yesterday with respect to volume of trading in 1963 in

cottonseed oil, and you said that it rose significantly in a numerical sense, do you recall that?

A I do.

Q Did the increase in volume of trading lead you to believe that there was any manipulation, squeeze or corner going on?

A No, sir, it did not.

Q What did you believe when you saw volume was increasing?

A Well, when I saw the volume increasing, it did not reflect anything more than the expansion of the use of the market which coincided with the flow of the crop.

The more cottonseed produced, the more cottonseed oil produced, the greater the need of the market for hedging, the more speculative activity.

Furthermore, this was not an item that was isolated to cotton oil along. If you looked at the soybean oil market, you saw that the trading volume expanded in the soybean oil market.

If you look at the soybean market, you saw that the volume of trading in the soybean market was expanding. As a matter of fact, 1963 was the beginning of a large expansion in activity on commodities futures market, throughout the country.

Q Grains?

A Grains, soybeans, edible oils.

Q When you saw the volume of open interest increasing significantly, you told plaintiff's counsel, in the numerical sense, why did that not suggest to you there might be a manipulation, squeeze or corner?

A Because the greater interest in the market, the greater the participation and the greater the open interest.

Q With respect to deliveries thesame question was asked.

What did the increase in deliveries on the futures market lead you to conclude at the time?

A The increase in deliveries simply reflected that the producer of cotton oil found the price on the New York Produce Exchange more attractive than the price in the cash market and, therefore, when he sold his hedge, he found it more advantageous to deliver the oil in satisfaction of his hedge than to buy back his hedge and sell his cash oil in the cash market.

Q With respect to the supply of oil, you told us yesterday that the supply of oil in the east coast was increasing in '63.

Do you recall that?

A I do, sir.

Q And that warehouses were being built, is that right, in 1963, to accommodate and supply this oil?

A That is correct, sir.

Q Was that evidence to you of any manipulation, corner or squeeze in the market?

A No, it was not, sir.

Q Why not?

A Well, to begin with, it didn't seem likely to me that the trade would be investigating its capital in the construction of storage facilities because they sensed a manipulation. I think they were doing it because they sensed an expansion in the volume of trade and expansion in the use of the futures market and a large expansion in the export of oil.

Q So they were building the licensed warehouses to accommodate oil needed for export in large part; is that right?

A That is right.

Q Was it a disturbing or reassuring fact to you to see that delivery of oil was increasing somewhat in 1963 on the New York Produce Exchange?

A No, it was not disturbing. I felt it was a confirmation that the market was serving a real

economic function.

Q Yesterday your attention was directed to ex-pit transactions which you also said were increasing in 1963 significantly on a numerical basis.

Did those ex-pit transactions suggest to you in any way that they were some kind of evidence of somebody attempting to corner, squeeze or manipulate the market?

A No, sir. I could think of no way where the ex-pitting could signficiantly influence the price of either cash oil or futures.

Q What can you tell us about what the price range was with respect to cottonseed oil on the New York Produce Exchange in 1963, particularly the second half?

A In 1963 the price of cottonseed oil was, in my judgment, reasonable. It was trading between 11 cents and 14 cents. It was trading in reasonable proportion to competitive or substitute oils.

That is one thing that needs to be explained a little bit.

Q What do you mean by "substitute oils"?

A Well, the fats and oils to begin with are a basic food. It is needed in the diet. It is a very

What was the size of the New York Produce Exchange in 1963 with relation to the Chicago Board of Trade?

A Well, the production of cottonseed oil in 1963 was in the area of 30,000 tanks of oil. The production of soybean oil was in the area of 100,000 to 110,000 tanks. So it's four to one, approximately.

Q The New York Produce Exchange had one pit and the Chicago Board of Trade had four or five pits?

A That is correct.

Q All right.

Returning, Mr. Fashena, to another subject that was raised yesterday.

You were asked whether you knew in 1963 that some of the open interest was concentrated in large traders.

Do you recall that?

A I do, sir.

Q Whatever you knew about concentration of open interest in 1963 or thought you knew in 1963 with respect to that subject, why didn't that suggest to you there might be some manipulation, corner or squeeze?

A Well, as I read the market at that time, I

believed, and I think the facts confirmed it later, that the short was a trade short with oil to deliver, and the buyer was a trade buyer with contracts to fuifill in the export market.

So I couldn't envisage without a large speculative position either on the long or short side that anyone was going to be squeezed because the seller had the oil to deliver, the buyer had a market for the oil when he received it and I could see no crisis in a situaation like that.

Q If you put these separate factors together in 1963 that we have been talking about, rise numerically, volume of trading, open interest, deliveries, ex-pit and the question of concentration, if you put them all together or if you put them together in any combination at all, would that change your testimony that you saw no evidence of any price, squeeze or corner or manipulation?

A No, sir.

I would like to say this, sir: I have been a little mystified and occasionally confused at the constant reference to the open interest and the folume of trading and the deliveries and the ex-pits as being storm signals that were flying to indicate that some manipulation or something wrong was going on in the

trading ring that we as members of the board, that I as the treasurer should have detected and should have brought to the attention of some committee.

I submit that -- I don't want to be facetious, but I think that this emphasis on these technicals -- I call them technicals because that's what they are -- is a theory that has been invented for this trial.

Q All right. Let me change the subject.

With respect to Mr. DeAngelis, did you know him in 1963?

A No, sir.

Q You told plaintiff's counsel yesterday that you had heard that in 1961 Mr. DeAngelis was no longer allowed to ship oil under public law 480 government contracts.

Do you recall that?

A Yes, I do.

Q Did you hear anything about whether Mr. DeAngelis was allowed by the U. S. Government to ship oil on public law 480 contracts in 1963?

A Yes, I have been reading that he was shipping oil on PL480.

Q In 1963?

A In 1963, and large quantities of it.

Q And that was part of his large export business in 1963?

A Yes, sir.

Q With respect to Mr. DeAngelis again, you said yesterday that you had heard that he was suspended from the Chicago Board of Trade at one time for some kind of fictitious or wash trades; is that right?

A That is right, sir.

Q Did you know or had you heard whether or not Mr. DeAngelis was a member of the Chicago Board of Trade in good standing in 1963?

A I think he was a member in good standing in 1963.

Q Were you aware of any fictitious trades or wash sales of trades of any kind on the New York Produce Exchange?

A No, sir.

Q Did you know a firm by the name of Ira Haupt & Company in 1963?

A I did.

Q What did you know about Ira Haupt & Company in 1963?

A I thought very highly of them. I had my own personal security account with the firm of Ira

Haupt for a number of years. I personally sponsored Mr. Ira Haupt Senior's membership on the New York Produce Exchange and I was gratified to note that the firm of Ira Haupt was going into a -- was showing more interest in developing a commodity business. I felt they could make valuable contributions to the commodities business because they were experienced commission merchants, they knew the markets, they knew how to handle themselves, they had survived the crash of '29, and I had no reason to believe that they could not successfully participate in the commodity futures market.

5A

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Q And is it a fact that as 1963 went on, you learned that Ira Haupt & Company was taking a more active interest in cottonseed oil futures than it had prior to that time?

A That is right, sir.

Q And was that a disturbing or reassuring factor to you?

A It was a reassuring factor to me.

Q Why was that?

A Because I felt confident that if Ira Haupt was assuming positions, they were well protected and had looked into their customers and knew their customers.

Q Was Ira Haupt known to you to be a member of the produce exchange in 1963?

A Yes, I sponsored his application.

Q Do you know that Ira Haupt was a member of the New York Produce Exchange Clearing Association?

A Yes, I did.

Q And did you expect Haupt, as a member of the New York Produce Exchange, to abide by the rules and regulations of the New York Produce Exchange?

A I certainly did.

Q With respect to non-manipulation, corners, squeezing, and with respect to the margin requirements,

along with it.

Q Now I'd like to direct your attention to a period, it's up there on the calendar, November 14 through 19, 20. Is it right that that was a disturbing period to you personally because of family illness?

A Yes, that is true.

Q And that was your mother, was it not, who was in the hospital?

A That is right.

Q Did your mother die on November 23, 1963?

A Yes, she died on the 23rd.

Q Is it correct that you came from the hospital to attend this November 14th meeting?

A I came from the hospital to attend the meeting of the 14th.

Q On November 14 with respect to your expertise as a market analyst, could you tell whether the price of cottonseed oil futures was going to go up or down on the 15th?

A No, I couldn't tell at all.

Q You were asked yesterday some questions as to why a control committee was apointed on the 14th, at this meeting; do you recall that?

association could tell you is what the net position was that Ira Haupt itself had; not what its traders had?

A That is true.

Q Isn't it also true that the clearing association did not know the names of the traders who were customers of the various houses?

A That is true. Did not know and could not know.

Q So isn't it a fact that the control committee, one of its main objectives was to find out by sending out this position call, what each brokerage house had for each customer that the brokerage house had on the long or the short side?

A That is right.

Q And wasn't the purpose of that position call as it was discussed on the meeting of November 14 for the purpose of seeing whether or not there could be some redistribution of positions on a voluntary basis after the information came in pursuant to the position call?

A That is right.

Q And so, if you had seen Exhibit 1, that list of traders, and had made a telephone call to the clearing association, you couldn't get the information that the

Q So that did you foresee as a personal judgment with respect to what would happen in the event that condition did not come to pass, was not allowed to come to pass, but instead the market was expended and delivery not required and a price established; what did you then see would be the situation on the market?

MR. KIRSCH: Your HOnor, I object because I'm not sure I understand the question.

MR. O'DONNELL: I will rephrase it, your Honor.

Q Of course, the Haupt contracts were not put on the market, were they, sir?

A No, they were settled.

Q That was settled at this meeting, was it not?

A That's right.

Q What did you foresee then? The market would be closed,would it not?

A After the settlement.

Q Yes, sir.

A I foresaw that there could be a period when the hedges that had been wiped out in cottonseed oil might have to be reinstalled in the soybean oil market, and that that pressure might temporarily depress the

soybean oil market; but to a much smaller degree than if we had not settled the cottonseed oil contracts.

I also concluded that if the price of soybean oil because of this shifting of hedging from cottonseed oil to the soybean oil market substantially reduced the price of soybean oil, that it would be representing very good property to buy.

Q All right.

Now, with respect to all of your activities in 1963 as treasurer of the New York Produce Exchange, and as a member of its Board of Managers and other various committees that you have told us about, did you act at all times in 1963 in the best interests of the Exchange as best you could do?

A I thought I did and I think I did.

Q Were you trying to do your job in each of those positions for the New York Produce Exchange in 1963?

A I was conscientiously trying to do my duty to the best of my ability, guided by my conscience.

Q Going back to that meeting of November 19, 1963, was there talk of possible litigation by some members of the Exchange if the Exchange closed down on November 20, 1963?

A Yes. The great fear that we had, that I had, was not that the long would be pursuing us, because I thought we gave the long every benefit of the doubt and gave him a very equitable and fair settlement. It was the short, the man who had hedges, the man who had conducted his business on the basis of believing that he had a hedge, that found himself overnight without a hedge, which introduced all kinds of problems for him because in borrowing from a bank, for example, on inventory, the bank insists that the inventory be hedged.

And all of a sudden, the hedger no longer had a hedge. And he relied upon the Produce Exchange as the mechanism whereby he hedged his inventory.

Q Did those shorts ever again do business on the Produce Exchange?

A Unfortunately not, despite every effort that we could make to persuade them that we tried our best to be fair and equitable to longs and shorts. They concluded that we, the Board of Managers, had done them a great wrong in settling the prices out, and told us that they would never use our Exchange again.

Q Did Haupt on November 19th express its position as to whether or not it was appreciative or not appreciative of what the Board was doing on

November 19, 1963?

A The members of Haupt who were at this meeting were most grateful to us and virtually with tears in their eyes thanked us for what they thought was a statesmanlike decision.

Q The final question, Mr. Fashena:

Am I right that you yourself nor your firm ever did any business with Mr. DeAngelis or Allied at any time?

A No, we never did business with any of them.

MR. O'DONNELL: Thank you, your Honor.

THE COURT: Mr. Manning.

CROSS EXAMINATION

BY MR. MANNING:

Q Mr. Fashena, my name is Manning and I represent the defendant Harry B. Anderson and Merrill Lynch.

Did you know Mr. Anderson in 1963?

A Yes, I did.

Q I think you indicated that you were a floor broker and an analyst in 1963, is that correct?

A Floor trader and an analyst.

THE COURT: Is there a difference?

THE WITNESS: Yes, sir.

Q As a floor trader, you mean you were trading

Q Wasn't that belief in part based on a conversation with Mr. Anderson or a statement made by him?

A Yes, in part.

Q Do you recall Mr. Anderson telling you either at the meeting or before that he at the request of Ira Haupt & Co. had canvassed the market to see if there were buyers for the Haupt position and had determined that there were not?

A Very clearly.

Q He had done that at the request of Ira Haupt; is that correct?

A That is correct.

MR. MANNING: No further questions.

THE COURT: Mr. Fryer.

MR. FRYER: I have a few questions.

CROSS EXAMINATION

BY MR. FRYER:

Q I think you testified yesterday, sir, about a transaction between an exporter and an importer wherein the price was fixed by the closing price on the futures market as of a given day.

You called that,I believe, establishing a price?

A Establishing a price.

Q Right. The exporter would be entering into a contract with the importer for a sale of cash oil; am I right?

A That's right.

Q Would either of them be likely to execute any transaction on the futures market?

A Would you mind restating that question. I didn't follow it.

Q Yes.

Would it be possible that either the exporter or the importer might execute a transaction on the futures market with regard to the forward sale of cash oil?

A Yes.

Q Who would be likely to execute an order on the futures market, one or both of them?

A May we analyze it together?

Q Sure.

A The exporter makes a contract to ship a thousand tanks of oil two months ahead and he doesn't have the cash oil yet, so to protect himself and avoid the risk of an adverse price movement in the two months before he needs to ship the oil, he may go

into the futures market and go long a thousand tanks of, let us say, December oil. So now he has hedged more or less his risk because he knows that he is going to be long -- he is long at the time that he purchases it and the protection comes out of the usual parallel movement between cash and future.

So that if the market goes up in the two months so that he has to pay more for his cash, his December becomes worth more.

Now, then, on the other side there is a crusher who has bought seed which he has in his bins and that seed is going to be crushed and converted into meal and oil and it will be available for marketing. Let's assume that his schedule calls for that oil to be available for marketing in December, but he doesn't want to wait until he has the oil ready to sell and ship.

So he goes into the futures market and he hedges his inventory in the form of seed by selling a thousand tanks of December.

So then the crusher is now short a thousand tanks of December oil, the exporter is now long a thousand tanks of December oil and they are both going about their business.

The time comes when the crusher has completed

his operation and he now has cash oil. Two months have elapsed and the exporter now needs the cash oil to send it to the port, to load it on the ship, to ship it to Pakistan, let us say.

So eh then scouts around in the market and the exporter communicates privately as a commercial transaction with the crusher and he says, I need a thousand tanks of oil. What will you charge me?

And the fellow says, well, I'm going to base my price on the December delivery on such and such a date.

Let's assume that they negotiate it is going to be five points over or five points under or whatever they agree on.

So the agreement is made that when the transaction is made the exporter will give the crusher his thousand contracts of long futures which will offset when transferred to the books of the commission merchant that is carrying the crusher's account the thousand tanks that he is short, and that will cancel itself out and reduce the open interest.

Q I see.

Is there any particular time of day at which the exporter might purchase his futures contracts on the New York Produce Exchange?

A Usually the price would be established at the closing settling price of a particular day.

Q I see.

So then it would not be unusual, would it, for an exporter to be buying on the close?

A Not at all. It would not be unusual.

Q I see.

Going back to the ex-pit transactions for a minute.

I think you said that there was one type of ex-pit transaction that could reduce the open interest, am I right, sir?

A I just described the one.

Q Right.

Can there be ex-pits, a type of ex-pit transaction that would increase the open interest?

A Yes, there could.

Q Would that be a type in which both parties to the ex-pit were unhedged before they entered into the ex-pit?

A That is correct.

Q Could there be a type of ex-pit in which there would be no effect upon the open interest?

A Yes, there could be.

2671

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MR. KIRSCH: I'm sorry, your Honor.

Q Was analysis of price trends of futures contracts part of your business in 1963?

THE COURT: He's already said it was.

Q This morning you testified that in your opinion various factors such as volume, open interest, deliveries and the like were -- I think your words were, and correct me if I am wrong, techicals invented for trial.

A Excuse me?

Q Do you remember stating these various factors, volume, open interest, deliveries and so forth were something along the lines of technicals invented for trial?

A What I said was that they are -- that the theory which I understood, that an examination of an expansion in the open interest, an expansion in the volumeof trading, an expansion in the deliveries and an expansion in the ex-pitting were dangerous signals of a manipulation.

I said that I had never heard that theory. As a matter of fact, if I may enlarge on my answer, in technical analysis those that rely upon an analysis of open interest and volume for some

predictive valueconsider that when the price is riding and the volume is rising and the open interest is rising, that you have a strong technical market, that you would buy.

Q Do you subscribe to that type of technical analysis?

A Yes. I would rely on that as one of my predictive factors.

Q You are not in any way disputing the volume, open interest, deliveries, supply of oil, concentration and ex-pit trades were all factors that were considered by the industry in 1963?

MR. LIMAN: Objection to the form of that question. Considered by whom, for what purpose?

THE COURT: He said the industry. He's got that.

MR. LIMAN: What industry, your Honor?

THE COURT: Mr. Liman, I hope it's the industry we have been dealing with for three weeks.

MR. LIMAN: Is it the floor traders, the crushers? That's my question.

THE COURT: I think that you have to focus the question more sharply than that, Mr. Kirsch.

Q By persons such as yourself or in the

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(In open court; jury present)

MR. KIRSCH: I have no further questions, your Honor.

MR. O'DONNELL: Your Honor, I just have a couple of real quick questions and I will be finished.

RECROSS-EXAMINATION

BY MR. O'DONNELL:

Q Mr. Fashena, you remember Mr. Fryer asked you the question where you gave that explanation about the exporter shipping the oil abroad and going into thefutures market and the crusher, and you took us through the decision, do you recall that answer?

A Yes, sir.

Q That was an ex-pit transaction, was it not, sir?

A Yes, that was an ex-pit.

Q Why couldn't that be a transaction in the ring rather than outside the ring?

A If you tried to do it in the ring you'd have to offer a thousand lots, and you are not going to sell a thousand lots at one price. You'd have to be selling it piecemeal andyou don't know

at what price you'd be selling them, so that would make the whole operation impractical.

Q So the ex-pits serve the function of enabling a transaction which is legitimate that could not be done in the ring?

A Very definitely.

MR. O'DONNELL: That is all I have.

MR. KIRSCH: No questions, your Honor.

THE COURT: Thank you, Mr. Fashena. You are excused.

(Witness excused)

THE COURT: Call your next witness, Mr. Harris.

O T T O F. R E H D E R S , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. Rehders, how are you presently employed?

A I am self employed, sir.

Q In what business are you?

A Brokerage business. Floor brokerage.

Q Commodities brokerage?

in October of '67 than it is today, is that right?

MR. LIMAN: That was '67?

THE WITNESS: Yes. That is only eight years ago.

Q Your memory in '67 of what happened in '63 would have been better than it is today?

A I would think so.

Q Do you remember being asked these questions and giving these answers on that occasion in 1963.

Page 111:

"Q Did you have any knowledge in 1963 as to whether or not the increase in the open interest was caused by the buying of Allied or DeAngelis?

"A Did I have any information?

"Q Any knowledge or information?

"A I could only assume that it was Allied.

"Q Did you assume that it was Allied?

"A I can't properly assume that, but it was common talk that it was, yes.

"Q You say it was common talk. Where was it common talk?

"A On the floor."

Does that refresh your recollection that that is what you said?

A If I said it, I said it.

Q Do you recall whether the increase in the open interest, Mr. Rehders, was discussed at any meetings of the Board of Managers prior to November 14, 1963?

A No, sir.

Q When you said no, sir, is that you don't recall, or that was discussed?

A No, I do not remember having heard any conversations along those lines.

Q Let me see if I can refresh your recollection again with your prior testimony. That is at page 112. Following right up from where I stopped reading before, after the mention about common talk to the floor, the next question:

"Q Was it ever discussed at any meeting of the Board of Managers of the Exchange prior to November 14, 1963?

"A I think I have answered that, haven't I?

"Q I am talking about the increase in the open interest.

"A Yes, I believe so, informally."

Then it goes on.

"Q Do you recall the times of such discussion?

or off the record.

Q Informal discussions at Board of Managers meetings were fairly common, were they not?

A Yes.

Q Before and after the meeting?

A Yes.

Q In any event, you now recall giving this testimony?

A If it is in black and white, I said it, and I have just forgotten now that I may have said that then.

Q But it was accurate when you said it?

A Absolutely.

Q Do you recall whether the subject of investigating the size of Allied's futures position was ever discussed at a Board meeting prior to November, 1963?

A I don't remember that, no.

Q Either informally or formally?

A No. Not that I remember.

Q Mr. Rehders, once again I would like to refer you to your testimony in a deposition at the bottom of page 102:

"Q Mr. Rehders, do you recall that the subject

of investigating or determining the size of Allied's futures position was ever discussed at a meeting of the Board of Managers prior to November 14, 1963?

"A I would say informally, not on the record, but informally there was some conversation."

MR. SMITH: Your HOnor, may the witness' attention be directed to the top of page 104? It clarifies what Mr. Harris read.

MR. HARRIS: I haven't finished reading, your Honor.

THE COURT: He hasn't finished reading, and I think that you may have your opportunity to bring that out when your time comes.

Proceed.

Q "Q When you say not on the record, do you mean such discussions would not be reflected in the minutes?

"A Correct.

"Q Do you recall when the first instance when such discussion took place?

"A No.

"Q Do you recall if there were numerous discussions or just isolated instances?

"A I would say there were several conversations.

As to when they took place, it may have been after a Board meeting or during a Board meeting, I couldn't place it."

Then it goes on to state that you couldn't recall when during 1963 this occurred.

(Pause.)

Q That is what it said, right?

A Yes.

MR. HARRIS: Just to save some time, your Honor, I will turn to the top of page 104:

"Q Do you recall what the substance of that conversation was?

"A In substance, no.

"Q What was the subject matter of the discussion or conversation?

"A That Allied apparently, this is assuming if it was Allied, that it was a big factor in the market.

"Q You say assuming it was Allied.

"To your knowledge, did the Board ever make any effort to determine whether it was Allied prior to November 14, 1963?

"A The Board as a whole?

"Q Yes.

"A Not to my knowledge."

That is also your testimony, isn't it, sir?

A That is correct.

A I don't believe so.

Q In the early part of the year did they give up -- I mean Comenzo and Fontana -- the name of any clearing member that you recall?

A J. R. Williston, I think, for one. I can't recall any others.

Q Ralph Peters?

A Yes, perhaps.

Q Do you recall approximately when in the year they began to give up the name Haupt with any regularity?

A Maybe late summer. I'm not sure.

Q Did you observe during 1963 that Mr. Comenzo and Mr. Fontana bought at the close more frequently than during the rest of the day?

A No. They were buyers at the close, but generally they were fairly good buyers all day, to the best of my knowledge.

Q Do you recall if Mr. Comenzo was a buyer at the close more often than he was during the day?

A I think he was, yes.

Q Wasn't this buying at the close fairly continuous throughout the year?

A I don't know whether you can say throughout the year. I really don't recall. I would say --

than not when they exist a manipulation is going on. That is the question that is before you now.

A Is it more likely if they existed that a manipulation is going on than if they did not exist?

THE COURT: Yes. I think that's the question.

MR. HARRIS: Yes, your Honor.

THE WITNESS: I don't think it's more likely.

THE COURT: All right.

Q It was the fact that all these factors existed at once during 1963 makes no difference as to whether or not it's likely that a manipulation is taking place.

A Mr. Harris, we had an orderly market. I consider a manipulation price movement, inordinate price movement. We had none of that. That is my personal idea of what manipulation is. It's a manipulation of price. All of these other factors are extraneous. Singly they are probably all explanable. I can't explain them all. But there are probably explanations for every one of them.

Q May I read from your pretrial testimony again, Mr. Rehders.

MR. LIMAN: Page what?

elr Rehders-direct [2710]

Q "Q Is there a greater likelihood of manipulation with the coexistence of those factors that I just mentioned?

"A There might be. I have to get back to the fact that we assumed Allied to be a bona fide hedging account; that it was a legitimate business enterprise. It is a fact that they were the largest exporter of edible oil in the world during a certain period, so the coexistence of all these factors doesn't really mean a thing.

"Q Assuming that their position was a hedge.

"A Correct.

"Q And assuming that they were a large export factor.

"A Right."

Do you recall that is what you said?

A Yes. But I don't --

Q If you take away your assumption thatAllied was a legitimate hedge, Mr. Rehders, isn't it correct that the simultaneous coexistence of these factors would be a sign of potential manipulation?

A I can't answer that. Ireally can't. Because I don't know the answer.

Q If the large open interest were held by a

handful of speculators, would that be a factor indicating a potential manipulation, to you?

A Not manipulation, but people who perhaps took a position thinking the market was going up. It doesn't necessarily mean it's a manipulation.

Q If you have a long position concentrated in the hands of a few speculators, and those speculators guess wrong as to what is going to happen, won't that tend to create a disorderly market?

A It would make the market more valuable, yes.

Q And there may be a dramatic price change?

A Yes, but that has nothing to do with manipulation. They have taken a position that is wrong, and they have to liquidate and it goes down.

Q Dramatic price changes have nothing to do with manipulation?

A Not if somebody has to liquidate a position, no. That is saving your skin.

Q If the board have a duty in 1963 to preserve a fair and orderly market?

A Yes, they did.

Q What is a fair and orderly market?

A A market which -- where just practices

elr Rehders-cross [2718]

A Well, I served as broker for Hentz's accounts. I also did some other brokerage which came through Hentz and was later given up to another clearing member, and I also traded for myself, yes.

Q Were you on the floor almost daily during 1963?

A Yes, sir.

Q Did you find the cottonseed oil futures market to be orderly throughout 1963?

A Yes, sir.

Q Did you observe any evidence of a corner of the cottonseed oil market?

A No, I didn't.

Q Was there a large visible supply of cottonseed oil available for all comers in 1963?

A There certainly was.

Q Did you observe any evidence of a squeeze by anybody, of cottonseed oil in 1963?

A No, sir.

Q Did you find any shorts scrambling in any way to find oil to cover their position?

A No, sir.

Q Did you see any evidence of an attempt at corners or squeeze in 1963?

A No, sir.

Q Did you see any evidence of any attempt at price manipulation of any kind in 1963?

A No, sir.

Q Did you yourself represent shorts in 1963 from time to time?

A Yes, sir. Customers, yes.

Q And so you knew what the shorts were able to do in 1963?

A Yes, sir.

Q What can you tell us about price fluctuation in cottonseed oil in the second half of 1963? Was it in a broad range or narrow range?

A I would say it was in a relatively narrow range with a gradually rising tendency.

Q Do you recall if there was a 200 point limit all through the second half of 1963, except for the last few days when there was that 25 point limit?

A That 200 point limit existed even prior to '63, yes.

Q It existed for many years?

A Correct.

Q In the second half of 1963 there were no days when that 200 point limit was even reached?

A That is correct,yes.

Q What was your position in the market at that time? Was it long or short?

A Basically long.

Q You were expecting the market those days to go up, were you not, sir?

A That is correct.

Wrong again.

Q And you were wrong on those particular days, were you not?

A That is correct.

Q If the contracts of Ira Haupt had to be dumped on to the floor of the Exchange on November 20th because Ira Haupt could not pay the variation margin, would you expect the price to go up under those circumstances?

A No, sir.

Q You would expect it to go down the 25 point limit as distress merchandise?

A Yes, sir.

Q When you said you were long on those earlier days, you were long in your personal account or for your firm?

A My personal account, sir.

elrf 9 Rehders-cross [2729]

THE COURT: All right. We will adjourn for lunch, and I have to dispose of a matter with counsel. It will take me about five minutes. You can return at 2:05.

THE COURT: The jury left the courtroom.)

(Recess.)

THE COURT: I have made up my mind in regard to the pending motion and I might as well announce it now rather than waiting. The motion is granted. And I am granting it, that is, the motion to bar the introduction of any evidence in respect to the Harbor Tank incident in this trial, is granted. I am basing it on two grounds and I will set that out so you will know why I am doing it.

As I understand the New Jersey action brought by the plaintiff, and as I read the papers, that in that action they asserted as to Klein a failure to discharge his statutory duty as a member of the Board of Managers of the New York Produce Exchange to disclose the facts he knew about Allied and DeAngelis in respect to the Harbor Tank matter, and they also asserted a failure to discharge Klein's duty to the New York Produce Exchange, so that the latter could discharge its duty in the regulation of the market.

That action was settled and a release was granted to the plaintiff, to Bunge, and to Klein. Plaintiff now says that despite that release and settlement, that it can insert the Harbor Tank incident into this action, and their theory is that a single set of facts can properly give rise to several causes of action.

In granting that, I don't believe that the situation fits into that category. And since Mr. Klein's duty in re Harbor Tank as a member of the Board of Managers was specifically brought in issue in the New Jersey action and it is that duty which is being litigated here, to allow the Harbor Tank incident to be reintroduced into this trial would seem to me to be allowing the relitigation.

I must confess that perhaps a more careful framing of the issues in New Jersey might have led to the results which plaintiff asserts here. But as I read the issues and as they are presented, they do not conform to the restricted reading that plaintiff asserts. Even if I were disposed to allow it and concede at that time plaintiff was correct on that first ground, I would bar it under any circumstances but I think

that it would be prejudicial, it would lead to confusion, and would probably prolong the trial.

It would cause, it seems to me, a trial within a trial; it would make the Court's task of keeping the trial focused on the basic issues, which is as I think you all understand, in a multi-party trial, is difficult at best, in my judgment it would make a task impossible.

I also think that the fallout in respect of Continental Grain, Vögel, Anderson and Merrill Lynch would be particularly prejudicial because they would be engulfed in a great deal of evidence which has no relationship to their liability at all, and on the other hand I think that it would be particularly prejudicial to the New York Produce Exchange because it would taint them with alleged misdeeds about which at least insofar as the New Jersey action asserts, about which they knew nothing.

And finally, I am persuaded that there is sufficient indicia of Allied's and DeAngelis' bad reputation and involvement in unsavory matters to allow the plaintiff to introduce evidence to go to the question of foreseeability and the failure of the Board of Managers to perform their function, that they

can do that without bogging the trial down of this motion.

So the motion is granted. The proffer this morning of what the evidence is is sufficiently set out on the record, and I think that therefore the record is protected.

(Luncheon recess.)

gwrf pm la 1

AFTERNOON SESSION

2:00 p.m.

(In open court, jury absent.)

THE COURT: Mr. Harris, I thought I had made my position clear.

I understand you want to get the ground rules about the Harbor Tankers.

MR. HARRIS: Your ruling is clear. What I wanted to make certain was that I didn't on my direct or anybody else on cross get -- the term Harbor Tank incident, there is specific things. I wanted to make sure we all agreed on what the scope of the material that is not permitted to go into encompasses.

As I understand it, we are not permitted to go into the conversations that took place or the events that took place at the premises of Allied between the Superintendents people making their inspection or not making their inspection and their report to Bunge and the conversations between the Bunge people and the conversations between the Bunge people and Allied.

What I want to know is: Are we also precluded from getting into subsequent facts, such as, for instance, the fact that warehouse receipts were changed over from Harbor Tank to American Express without

gwrf 2 [2734]

getting into particularly why this happened, just simply to establish the fact that it did happen?

Perhaps subsequent to that there may be certain other events that occurred from 1962 when this happened through 1963 having to do with additional insurance and other things, steps that would imply some doubts as to the physical integrity of Allied but would not any implication one way or the other relating to that specific event.

In other words, the documents don't particularly cite to the event, there wouldn't be any conversations referred to. Before I offered any such proof I wanted to make sure that I wasn't going to blunder into something that would cause all kinds of objections in front of the jury.

THE COURT: It seems to me that you know this case far better than I do. I gather that you are going to want to bring out the fact that your client -- I gather there is no doubt about it -- had some fraudulent warehouse receipts, and that fact you want to introduce through the -- is the next witness?

MR. HARRIS: Yes, your HOnor.

THE COURT: If that is the question

you are raising, I don't have any question about that.

MR. LIMAN: Just so I don't get Mr. Harris into trouble, I understand from my conversations with Mr. DeAngelis that he will testify that my client had no knowledge whatsoever that he had any shortage of oil and that they dealt with him in good faith.

I think that I am entitled, if he is going to be bringing out that his client ended up with inappropriate warehouse receipts, to bring out that so did my client and that my client had no knowledge of this.

I will not ask him obviously about Bunge.

It seems to me that given the issue in the case, that I clearly am entitled to bring out through this witness the good faith of Continental Grain Company.

THE COURT: It seems to me, Mr. Liman, there has been no question about that, you are beating a dead horse. Obviously you have that right. I don't see why you jump to that so quickly.

I think that you can bring out the fact of the warehouse reciepts and the fact they were fraudulent, whatever he did and so forth, but none of this business with Bunge or Klein in regard to Harbor Tank.

MR. HARRIS: Am I entitled to bring out,

gwrf 4 2736

your Honor, that in September, October, that area of 1962 both Continental and Bunge, without getting into the underlying reasons, asked to have only American Express warehouse receipts and not to get any more Harbor Tank warehouse receipts and that is what happened after that?

MR. LIMAN: I don't think any of this is relevant, but if he goes into that, I surely am entitled to establish through this witness that my client knew nothing of the Bunge incident.

In fact, Mr. DeAngelis, according to his book and his statements to us was told by Bunge that he should say nothing about this incident and that it should be kept quiet.

MR. HARRIS: I don't see how you can bring it out that they didn't know without bringing out the incident.

MR. LIMAN: I can --

THE COURT: Wait a minute. I don't understand why in view of my ruling about that that you cannot bring out from your witness the fact that he utilized fraudulent warehouse receipts and the time he did it and who he gave them to and so forth without going into Harbor Tank or American Express or

anything like that. I don't see why you can't do that.

That is the way the matter ought to be presented.

MR. HARRIS: I was trying to show by implication on the foreseeability question, your Honor, that if two people dealing with Allied did at some point decide to take American Express receipts rather than Harbor Tank receipts, it is possible that they had some reason to doubt the way Harbor Tank conducted itself.

Haupt ended up with Harbor Tank receipts at the end as well. It seems to me --

MR.LIMAN: So did my client.

MR. HARRIS: It is some relevance, the foreseeability of what was going on, without getting into the underlying reasons of why it happened or why it didn't happen.

MR. LIMAN: What he wants to do is to do it by innuendo somehow because there was an exchange, and then I'm precluded from responding to it because of the Bunge problem. I don't think he ought to be permitted to do this by innuendo. I don't think the question of whether it was American Express or Harbor Tank should be permitted.

gwrf 69

THE COURT: I agree. I think that you can indicate the parties to whom he gave the worthless receipts, when he did it, but it doesn't seem to me -- the labels we are getting into, we are going to get into a problem. You can have him testify that he utilized these worthless receipts and who got them, how long a period he did it, who he dealt with and who he didn't deal with and so forth.

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2739

MR. HARRIS: Your Honor, I submit that doesn't help us at all on the foreseeability question. Unless we can at least raise my implication that somebody may have learned that or thought there was something peculiar or something unusual going on, then we'll end up proving the defense, that we gave warehouse receipts to them, too; therefore, they didn't know anything more than we did.

THE COURT: You will have to put him on and give me a little better approach to it than you have done so far.

Let's proceed.

MR. LIMAN: I didn't tell Mr. Harris to settle his claim against Bunge on Harbor Tank, that was his decision, or to enjoin Continental with Bunge in this lawsuit.

THE COURT: That's right. I'm not having any labels about this. You may find a way without labeling Harbor Tank and American Express and getting us involved in that to demonstrate that Continental and Bunge at some point got the good receipts instead of the bad ones. That's fine The issue of Harbor Tank is not to be mentioned in this trial.

gr2 [2740]

Bring the jury in.

(In open court; jury present)

THE COURT: Mr. O'Donnell, are you through?

MR. O'DONNELL: No, your Honor. I'll be one minute.

THE COURT: All right.

O T T O F. R E H D E R S, resumed.

CROSS-EXAMINATION CONTINUED

BY MR. O'DONNELL:

MR. O'DONNELL: May I proceed, your Honor?

THE COURT: Yes, you may.

Q Mr. Rehders, you testified to Mr. Harris that there were warehouse receipts called back in August or September.

Do you recall that?

A Yes, sir.

Q Were those warehouse receipts that were revalidated byt he New York Produce Exchange all found to be good warehouse receipts represented by oil without any oil missing?

A Yes, sir.

of the plaintiff, Mr. Harris, asking you about the fact thatyou recall that there may have been some discussions about the growing open interest and other subjects either at a board meeting or after a board meeting.

Do you recall that?

A Yes, sir.

Q And you testified that you did not recall who participated in those discussions?

A That is correct.

Q To the best of your knowledge, did Harold Vogel ever participate in any such discussions with you?

A Not that I can recall, no.

Q I want to ask you about this business of selling, buying at the close.

In your experience as a floor broker, have you ever received orders to sell at the close?

A Yes, sir.

Q Tell me what the instructions would be from your customer?

A Could be just sell ten December on the close.

Q Do you consider it to be manipulative

if a customer says to sell at the close?

A No, sir.

Q Are you able as you sit here today in 1975 or as you sat in a deposition in 1967 I think tell us whether the orders to sell at the close had more or less or an effect in 1963 than the orders to buy at the close?

A I think they kind of neutralized one another.

saw no evidence of a squeeze, you didn't consider these two facts, did you?

A No.

MR. HARRIS: No further questions.

RECROSS EXAMINATION

BY MR. O'DONNELL:

Q To determine whether there was a corner, squeeze or manipulation, would you look, Mr. Rehders, at warehouse receipts to try to find evidence of that?

A Mr. O'Donnell, what I look at was the nearby continuously at a discount. If you have a squeeze situation, the nearby is not going to be selling at full carrying charges.

Q Thank you, sir.

Was it selling at full carrying charges?

A Yes.

MR. O'DONNELL: Thank you, sir. That is all thequestions, I have.

THE COURT: Is that all? Thank you very much, Mr. Rehders.

(Witness excused)

THE COURT: Call your next witness, Mr. Harris.

MR. HARRIS: Mr. DeAngelis.

A N T H O N Y D e A N G E L I S , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. DeAngelis, can you attempt to keep your voice up so that the people in the back can hear.

Were you subpeoaned here today, sir?

A Yes, sir.

Q Mr. DeAngelis, how old are you, sir?

A 60 years old.

Q How are you present employed?

A I am general manager of a meat packing and slaughtering factory in North Bergen, New Jersey.

Q For how long have you been employed in that capacity?

A Two years.

Q Prior to that what were you doing, sir?

A Prior to my employment in North Bergen?

Q Yes, sir.

A Well, for one year before that I did nothing.

elr DeAngelis-direct [2749]

Prior to that I was in prison.

Q For how long were you in prison, sir?

A Seven years.

Q Can you tell us in general terms what you were convicted of?

A In 1965 I was sentenced to 20 years in prison by a federal judge for transporting and issueing forged warehouse receipts.

Q You say you served seven years of your sentence?

A Seven years. I was paroled after seven years.

Q Are you on parole now?

A Yes.

Q During 1963, Mr. DeAngelis, what business were you in?

A I was president of Allied Crude Vegetable Oil Refining Corporation.

Q In what business was Allied Crude Vegetable Oil Refining Corporation at that time?

A It was in theprocessing, refining and shipping of fats and oils.

Q Did that include cottonseed oil?

A Yes, sir.

clr DeAngelis-direct 2750

Q Soybean oil?

A Yes, sir.

Q Where was the plant located, the facility located?

A In Bayonne, New Jersey.

Q Just in general terms, what did the facility at Bayonne consist of?

A It was a large tract of land on which was situated -- it was on the New York waterfront. It had deep water facility for loading directly into ocean steamers. It had a battery of storage tanks, buildings that contained refining equipment and processing equipment. It was a good, modern plant. I believe I saw a picture of it here today somewhere. Somebody has a picture of it here.

Q Is this the picture you are talking about (indicating)?

A Yes. That is my plant.

Q That is the Allied plant in Bayonne?

A Yes, sir.

Q When was that picture taken?

A Probably in 1961 or 1.

MR. HARRIS: Your HOnor, I know this is background, but perhaps it would facilitate matters to

elrf 3 DeAngelis-direct [2756]

is that correct?

A That is correct.

Q Can you just in general terms describe the nature of the export business that Allied transacted with Bunge?

A Through this plant Allied exported approximately one billion pounds of fats and oils a year. This plant, as you can see, has deep water facilities where a boat can load right at the piers; which gave it an economic advantage for doing the export business.

We would offer product to Bunge and many other companies emanating from this plant, where ships would be loaded for Bunge and other customers.

Q Was some of this export business under the public law 480 program?

A Some was, yes.

Q Can you just describe in very general terms what public law 480 program was and how it worked, sir?

A Generally a foreign country not having dollars to buy oil, in this country vegetable oil, let's assume it is soybean oil, that foreign country, assuming it was Pakistan or India or Egypt would deposit their local currency with the United States Government,

THE COURT: I don't need a chorus. Mr. Liman has spoken for all of you.,

All right. The objection is overruled.

The letters are going to be admitted and the admission is tentative based on the assumption that the contents of the letters are going to -- you are going to es.blish something with regard to what those letters disclose in respect to the issues in this case.

The jury knows, the letters only relate to the defendant Bunge and Klein and do not relate to any other party, any other defendant here.

MR. MINNEROP: Could they be so marked, your Honor?

THE COURT: All right, fine.

(Plaintiff's Exhibits 91, 92-A through D, 99 and 178 received in evidence.)

xx

Q Mr. DeAngelis, looking at Exhibits 92-A through D, were they attached or were they attachments that were sent to Mr. Klein with Exhibit 98, the letter?

A Yes, that is correct.

Q Can you just describe in general terms what information is set forth on each of those attachments?

A The attachments contain Allied's position at that time in the futures market.

3B gr1 DeAngelis-direct [2769]

Q Can you do it one by one so the record will be clear?

A Document 92A is Allied's position in the futures market.

THE COURT: As of when?

MR. FRYER: Can you indicate the date, please?

THE COURT Af of when?

THE WITNESS: As of September 14, 1962.

A (Continuing) Exhibit 92B shows Allied's position. The first position -- I'm sorry --- was for soybean oil.

The second, 92B, was cottonseed oil.

THE COURT: As of when?

THE WITNESS: Also as of September 14, 1962.

A (Continuing) 92C, as of the same date, September 14, 1962, shows inventory, merchandise purchased, but not received, soybean oil and cottonseed oil of all types and grades. On the bottom its total, all products on hand and to arrive, 718 million pounds.

92D, of the of the same date, September 14. Sales,of all sales, domestic shortenings, export vegetable oils, domestic package shortenings, export

gr2 DeAngelis-direct [2770]

free dollar bulk sales, government agency sales and futures, future oils, industrial tallow. Sales, 639 million pounds.

The next sheet on 92D shows export sales. The previous figures that I read off were all domestic and export shortening sales.

The second sheet of the same date and under the same exhibit, 92D, shows export sales as of midnight, Friday, September 14, 1962. It shows country, destination and the export company that we made the sale through. List of sales listed, 242 million pounds.

The next sheet under the same exhibit, the same date, lists various other type sales, free dollar export business, and sales made to our various plants in other parts of the United States that were connected with Allied. Total 126 million pounds.

The next sheets shows domestic sales, bulk only, of vegetable oil, combination of various vegetable oil, shortenings, and two pages of companies, names of companies, Burry Biscuit, Continental Baking, General Baking. Total, 162 million pounds.

MR. LIMAN: Can we stipulate that Continental Baking is of no relationship to Continental Grain?

THE WITNESS: Absolutely, no connection

whatsoever.

MR. LIMAN: Thank you.

A (Continuing) The last sheet under that same exhibit, 92D, the same date, shows industrial sales of grease and tallow amounting to 42 million pounds.

These were sent to Mr. Klein as per his request of me in the personal visit, that he wanted to know our sales and position in the market.

Q THese all related to sales and positions of Allied Crude, isn't that right, and its related companies?

A Yes.

Q You also went through Exhibit 99, supplied Mr. Klein at the same time with the forecast of your expected business in the coming year, isn't that correct?

A That is correct, Mr. Harris.

Q Subsequent to this period, September 1962, Mr. DeAngelis, did ou supply any additional information about Allied's business to -- I mean in writing -- to Mr. Klein or the other people at Bunge? Do you recall?

A There were requests periodically, and whatever

information was asked I would try to the best of my business to supply. It is so many years ago. Unless you show me a document, I could say there were always requests for information which I supplied similar to this request here which I just read off.

Q This was normally confidential business information, wasn't it?

A I would assume. I would say yes. What I would give them to be confidential, yes.

Q You didn't supply this on every one?

A Absolutely not.

Q In the letter, just to avoid any confusion, when you refer to Harry and Richard, are you referring to Mr. Fornari and Mr. Forti?

A Yes.

MR. HARRIS: Let me indicate, and it is a stipulated fact, that Harry Fornari is a vice president of the oil department of Bunge, was in 1963, and Richard Forti was a vice president of the oil department of Bunge. Mr. Klein was president of Bunge.

Q Mr. DeAngelis, turning to page 4 of your letter of September 17, which is Plaintiff's Exhibit 98, you see a reference that you will guarantee Bunge will

do 500,000 tons of export business minimum with a guarantee of $2 to $3 per ton profit or markup? Do you see that?

A That is stated here in this letter I wrote, yes.

Q Can you recall now what you meant by that when you stated that?

A Well, this letter was written to Mr. Klein to ask Mr. Klein to have his company finance to a great extent our operations. This particular paragraph states what I would be willing to do in exchange for the financing that I was looking for for my company.

If you want, I will read the paragraph that I wrote.

"I would gladly undertake to say that in the coming crop year" -- that is the 12-month period starting July 1st of any year to the next year -- "I would gladly undertake to say in the coming crop year I will guarantee that Bunge will do on their own 500,000 tons minimum of export business in all types of fats and oils, both PL480 and free dollars, with a guarantee of $2 to $3 per ton profit or markup."

That is the end of that particular paragraph.

Q What I would like to ask you is what did you mean by a $2 to a $3 per ton guaranteeed profit or markup?

A Well, what I am saying to Mr. Klein is that in exchange for his financing our operations, I would guarantee that he would sell that much product over the coming year and his company would earn $2 or $3 per ton.

This is exactly what it says. This is what -- this was exactly my intention.

Q I guess what I'm trying to ask you, Mr. DeAngelis, is how you were going to go about guaranteeing such a thing?

MR. FRYER: Your Honor, I think the letter speaks for itself as far as Bunge and Klein are concerned. I object to Mr. Harris asking this witness what he meant at the time.

MR. HARRIS: I'm trying to get him to elaborate on what he said, your Honor.

A This --

THE COURT: Wait a minute, Mr. DeAngslis.

THE WITNESS: I'm sorry.

THE COURT: He stated there he's guaranteeing that they will make $2 or $3 a ton. He said that.

gr8 DeAngelis-direct [2776]

MR. HARRIS: Sure.

Q I show you Plaintiff's Exhibit 95 for identification, Mr. DeAngelis, and ask if you can identify that document.

A Yes, I can.

(Continued on next page)

4A

elr DeAngelis-direct 2777

Q What is the document, sir?

A 95, Exhibit 95 is a letter from Bunge to Allied confirming 11 items as having been agreed in recent discussions that were held between myself and Bunge.

Q And did this include a financing agreement between Bunge and Allied, sir?

A It is all spelled out in the 11 paragraphs.

MR. HARRIS: I offer this, your Honor.

MR. FRYER: I object on the same ground, relevance, your Honor.

MR. LIMAN: Is it stipulated that all these are offered on the same basis?

MR. HARRIS: Yes, as to Bunge and Klein, your Honor, not as to the other defendants.

(Pause)

THE COURT: The same ruling. The objection is overruled.

(Plaintiff's Exhibit 95 was received in evidence)

MR. LIMAN: Can that be so marked with the appropriate marking, against only Klein and Bunge.

MR. HARRIS: We can do that at the recess, your Honor.

elr DeAngelis-direct [2778]

May I have Mr. DeAngelis just read paragraphs 5 and 6 of the letter so that we can move on.

THE WITNESS: Paragraph No. 5 "Allied guarantees Bunge a hundred thousand tons of business prior to December 31, 1972 for which no additional financing will be required by Allied. That is, such business will be in reduction of outstanding loans and advances. Accordingly, no further purchase or advances against merchandise will be required on the part of Bunge unless mutually agreed upon. Allied guarantees that all outstanding loans by Bunge will be reduced to a sum not exceeding $10 million by November 30, 1962."

That was paragraph 5.

Paragraph 6. This was written by Bunge to Allied.

"Allied further guarantees Bunge new business for 400,000 tons between January 1, 1963 and September 30. On these 500 tons" --

Q I think it's 500,000.

A -- "500,000 tons new business Allied guarantees a minimum of $2 per ton, namely a total of $1 million with the understanding that should such sales not reach the intended amount of500,000 tons the margin per ton

will be increased as to reach an overall remuneration for Bunge of $1 million in any case. In addition to this, Bunge will continue to charge interest at the rate of 7 per cent per annum on all monies advanced to Allied as heretofore."

That is the endof paragraph 6.

THE COURT: That letter is dated in September of 1962?

MR. HARRIS: Yes, your Honor, September 26, 1962.

Q Can you make out the signatures on this, Mr. DeAngelis, just for the record?

A I cannot.

Q It is signed Bunge Corporation by someone, you can't make out who it is?

A Looks like two signatures, but I can't really read them.

Q How about Allied?

A My signature is on the bottom for Allied.

Q With regard to Continental Grain Corporation what types of business did Allied do with Continental Grain during the period 1960 to 1963, in general terms?

elr DeAngelis-direct 2780

A Generally the business with Continental was mostly where sales were made to Continental and they would pay for the merchandise. At a later date there was some warehouse financing and also some financing of actual American Express receipts at the plant in Bayonne.

Q Did Allied sell oil to Continental which was exported under public law 480 program?

A At times, yes.

Q And in the free market too?

A Possibly.

Q To save time, Mr. DeAngelis, were the warehouse receipts transactions with Continental, did they work in approximately the same manner as the ones with Bunge?

MR. LIMAN: Your Honor, I object. I don't think I ought to save time when it comes to my client. My client is entitled to separate consideration.

MR. HARRIS: Fair enough.

THE COURT: Mr. Liman, that objection is overruled because I am prepared to save time.

Q Did the warehouse receipt financing work in roughly the same general manner that you described earlier, with Bunge? I am talking about field warehouse

receipts now.

A Generally the same. Generally.

Q Did Allied engage in any, or did Continental finance any tank cars for Allied?

A No.

Q Did Continental accept post-dated checks from Allied, as you recall?

A No.

Q So in that aspect it differed from Bunge?

A In those two aspects, yes.

Q Did you from time to time enter into financing agreements with Continental Grain Corporation?

A The agreements generally were not in writing, as in the case of Bunge. The agreements were generally made between Mr. Totah and business by word of mouth.

Q Who is Mr. Totah?

A Mr. Totah was in charge of the fats and oils division at the Continental Company.

Q Do you know his full name, sir?

A Mr. Rafael Totah.

Q Is he in court today, in the back row?

A Yes.

Q Did you deal with him personally?

A Generally, yes

Q Did Mr. Gittleman deal with Totah?

A After I would initiate the discussions.

Q Did you deal with anyone else at Continental in this connection?

A Generally yes, but mostly with Mr. Totah.

Q Do you recall the name of the other persons you dealt with at Continental?

A George Stafford, who was working under Mr. Totah's direction.

Q Mr. DeAngelis, did there come a time when Allied Crude began to issue false warehouse receipts? By false, I mean warehouse receipts where therewas either none or insufficient or improper oil in the tanks that were represented by these warehouse receipts?

A Yes.

MR. FRYER: I object, your Honor. I don't think Allied issued any receipts. It was the warehouse that issued the receipts.

Q Because he had warehouse receipts to be issued?

A Yes.

Q Mr. Fryer is right, isn't he, Allied

itself didn't issue any warehouse receipts?

A That's correct.

Q The field warehouseman at the warehouse issued receipts?

A There were two warehouses here, one controlled by American Express and one controlled by Harbor Storage, two separate companies, as evidenced by this picture.

At a given moment, I believe in answer to your question, I believe you asked me when the first time that warehouse receipts were issued, I believe you said fraudulent or -- you used some word --

Q I will rephrase it.

Before we get to it, can you explain in the normal course how a warehouse receipt came to be issued by one of these warehouses at the Bayonne facility?

A American Express would keep a custodian on these premises. All of the tanks that were so marked were under his control. They were locked with locks and he would check theinventory each and every day on the premises; because each day three or two or four hundred tank cars would come in from all parts of the country, or oil would come in by barge and be

pumped out for refining or loading onto a ship for export all over the world. So you have incoming being unloaded into the tanks and outgoing oil going either to be refined or to be loaded into a ship, each and every day.

The custodian on the premises kept a running inventory of oil in the tanks and oil being taken out, in both the American Express and Harbor Tank case.

Q I don't think you quite answered my question.

Say, for example, you wanted to borrow money from Bunge and give Bunge a warehouse receipt, say an American Express warehouse receipt to pledge as security for the loan, how did you cause the warehouse receipt to be issued by American Express?

A If on a given day the custodian would show that he had in his tanks under his control a quantity of oil which was not pledged to anyone, he would then issue a receipt, assuming that we had an inventory of a hundred million pounds of soybean oil in those tanks, he would issue receipts up to a hundred million pounds to designate that the oil was in his possession.

We would take those receipts and give them by prearrangement to Bunge or anyone else that we did business with in exchange for a loan.

The loan would generally be predicated on the value of the soybean oil on that market day where the loan was requested. This was the normal business that Allied did because Allied did not have adequate funds to keep these tanks full or to run export business after it suffered a large loss in the Spanish business.

Q Did Bunge lend you the full amount? When you would give Bunge a warehouse receipt you said that they would lend you money based on the market close. Would they lend you a hundred per cent based on the market value of the oil in that --

A Generally if oil was 10 cents a pound on the exchange they would loan us 80 per cent or something like that, 75 or 80 or 85 per cent. It was generally a certain percentage of the then going market.

Q If the market price fell would you be required to put up additional collateral?

A Generally no, but if there was a drastic drop, I believe there would be a reevaluation.

Q That didn't happen, though, did it?

A I don't recall it happening, no.

Q Did there come a time when Allied caused these warehousemen to issue warehouse receipts which were then pledged to somebody for loans, where the oil represented by those warehouse receipts either didn't exist or was somewhat less than what was described inthe warehouse receipt?

THE COURT: I think we better take a recess. We will take our recess now. That will be the pending question when we resume.

(The jury left the courtroom)

THE COURT: I want to be sure that you have clear concise instructions, that we are about to go into an area, I think you can describe the incidents of the warehouse receipts without mentioning Harbor Tank or American Express. I don't want either of those terms to come into your testimony from here on, do you understand?

THE WITNESS: Yes, your Honor.

THE COURT: All right. We will take a recess.

(Recess)

(In open court; jury present)

MR. HARRIS: I think the reporter can

elr DeAngelis-direct [2787]

read back the pending question, your Honor.

THE COURT: All right.

(Question read)

A The answer is yes. It started about 19 -- approximately 1959. After I had made a sale to Spain, the Spanish Government. I sold them 50,000 tons of soybean oil which I prepared, which I placed in the New York Harbor, which they refused to take, and which I suffered a loss of approximately $4 million. It was after that sale in 1959 that the first warehouse receipts were issued which were fraudulent, or did not contain what was supposed to be there. Started about 1959.

Q Did it continue subsequently, sir?

A Yes. It continued right up until 1963.

Q Until November of '63?

A That's correct.

Q Did there come a time when you issued fraudulent warehouse receipts?

A Yes.

Q Can you tell us when that occurred?

A In the last month of Allied's existence in 1963 in order to stave off the complete collapse of everything that we had built here, and evaluating

whether it was worthwhile to continue in the face of great odds, great injustices on the part of other people, I procured without the knowledge of American Express 18 warehouse receipts, without their knowledge. I forged those receipts by myself, for which I was sentenced to prison.

Q Who did you give them to, do you recall?

A I can't say specifically who they were given to, but they were given to four or five different companies, to my best recollection.

Q Was Ira Haupt one of them?

A Yes.

Q Let me just back up for one second, Mr. DeAngelis.

When you referred earlier in the letters we were reading to guaranteeing Bunge a profit of $2 a ton, did you make similar guarantees to any other companies, do you recall?

A I may have. But it was particularly made to Bunge.

Q Was it made to Bunge on more than one or two occasions?

A Yes.

Q Can you estimate at thi s time how many

times you made guarantees to Bunge?

A I believe, in looking over the correspondence over the two or three or four years prior to the collapse, I would say it may have been made each and every year, at least once.

4b pm elrf 1 DeAngelis-direct [2790]

Q In addition to gurantees on profits of sales of oil to Bunge, did you guarantee them profits on any other types of transactions?

A Every business I did with Bunge there had to be a profit, otherwise they wouldn't do it. So if I proposed a business to them, whether it was the sale of oil to a foreign country or the purchasing of oil for my account or the sale of oil or a registered warehouse receipt, there always had to be some remuneration over the interest cost, otherwise they just wouldn't do it.

Q When you look at Exhibit 95, which is the letter agreement between Bunge and Allied of September 26, 1962, and there is a whole series of terms in that letter, were these terms insisted upon by Bunge?

A Yes.

Q Were these terms which they insisted upon as a requirement that Allied meet in order to obtain the financing?

A That is correct.

Q Mr. DeAngelis, starting in say 1961 on did Allied Crude have a position in the cottonseed oil futures market, the soybean oil futures market?

A Yes.

elrf 2 DeAng lis-direct 2791

Q What kind of position did Allied take starting at that time?

A In 1959, after the sale to Spain and the subsequent refusal of the Spanish Government to take the 50,000 tons of oil, even though we had a signed bona fide contract, as many times previously we had sold, Allied had on hand the oil that Span did not take, on which Allied suffered approximately a four million dollar loss, outright loss. It was at that time that Allied started to accumulate a long position to protect its inventory on hand from the refusal of the Spaniards to take the oil.

The long position of Allied continued and increased up until the time of its collapse.

Q By collapse, you are talking about November 19, 1963, is that right?

A That is correct.

Q On that date Allied filed a petition in bankruptcy?

A That is correct.

Q Was there any reason why the buying of futures contracts by Allied continued and grew from 1961 up until November 1963?

A Allied's business was sale and exporting

fats and oils. It sold each year approximately one billion pounds of oil. It was in a net long position. In order to preserve its business Allied continued to support the market at all times, to prevent the depressing of the value of its inventory.

Q What would have happened during the period 1961 to 1965 had the futures market price fallen?

A The Allied position in the future market, had the market fallen in the futures market, Allied would have been required to put additional margin with the brokerage houses, and the value of its own inventory, if unhedged and if against prospective sales, would have gone down.

Q Did Allied have the money to put up for this margin that would be required?

A Generally, no.

Q Did there come a time during 1963 when the buying activities of Allied even increased beyond the preceding rate that existed, say in 1961 and '62?

A In the latter part of 1963, in the last several months prior to November the buying increased at a much greater pace than ever before.

Q Can you tell us why that took place?

A It took place on one part on the reason

elrf 4 DeAngelis-direct

that I stated previously, that Allied could protect what it owned, and not to be called on for margin, on a dropping market, continued to buy in the hopes that it could at some point effect export business that it was working on vigorously to sell and export the oil; which sales never materialized.

Q This buying by Allied was intended to keep the price of the futures up, is that correct?

MR. O'DONNELL: Objection, your Honor, to the form of the question.

A It was intended to keep the price --

THE COURT: The objection is overruled. You may answer.

THE WITNESS: I'm sorry.

THE COURT: All right. Go ahead.

A It was intended to keep the market stable. Not to go up and not to let it go down. If it had gone down Allied's position in the end, each penny down would mean a cost of 20 million dollars. Each penny up Allied would have gained 20 million dollars.

It was not a question of going up or going down, it was a question of maintaining a steady market.

Q When you are talking about this one penny up and one penny down and the 20 million dollars, sir,

elrf 5 DeAngelis-direct [2794]

are you referring to variation margin?

A Exactly.

Q Did you ever consider selling off your position,as opposed to continuing to keep buying?

A Yes, I would say I considered that at times. I decided against it, in the view of the action of certain people in Government, in private industry, as to whether I should allow that to happen, or to keep on buying, to see whether all the wrongdoing that was being done by others was going to win in the end.

I was the one who decided in the end to file the petition in bankruptcy, as against stealing another 18 warehouse receipts and pledging them again, and probably win the battle or give up myself.

Q Did you ever believe during say the summer of 1963 as to what would have happened to the market had you decided to sell off Allied's position?

A The same thing that happened in the end, without my having anything to do with it. When I filed the petition the market was depressed to six cents a pound. The whole world starving for oil, six cents a pound. That is where we washed out Allied. The market went from 12 to six. Six cents down at 20 million dollars a cent, that is 100 million dollars. That is

elrf 6 DeAngelis-direct [2795]

where all the money was lost. And you asked me whether I would do it willingly, I did it in the end willingly, and I considered it all along whether I should do it or not.

Q But you had an opinion in 1963 that if you stopped your buying activities the market would fall, isn't that right?

A Absolutely.

Q And you continued Allied's buying activities up until the end of --

A Right up until the day before we filed the petition.

Q In other words, looking at that calendar, you filed the petition on the 19th which is a Tuesday and the 18th is a Monday, so you mean through the preceding Friday, the 15th, you continued your buying?

A We filed the petition I believe on a Tuesday. We stopped all activity as of the Friday, which would have been the 15th, the 15th of November.

Q Allied's futures position continued to grow during 1963?

A At an accelerated pace.

Q And this was all on the long side of the market, wasn't it?

A Buying all the time.

Q By November, 1963 you had 90 per cent of the outstanding long position, didn't you?

A In cottonseed oil. Not in soybean oil. Soybean oil I believe we had a 40 or 50 per cent interest in the market.

Q When you get to September, October, November of 1963, let's talk about cottonseed oil now. When your position was growing to 90 per cent of the open interest, Mr. DeAngelis, was that position a hedged position?

A A true hedge, no.

Q When you say a true hedge, can you explain what you mean?

A I would qualify that and say no, it was not hedged.

Q You didn't have forward sales contracts equal in amount to the futures position, did you?

A The answer is no.

Q Was Allied's activities in buying cottonseed oil futues contracts up until November 15, 1963 successful in stabilizing the market price of cottonseed oil futures?

MR. LIMAN: Objection to that. Calls for a conclusion.

elrf 8 DeAngelis-direct [2797]

MR. O'DONNELL: Objection, your Honor.

THE COURT: Objection sustained.

Q Mr. DeAngelis, to your knowledge did the market price of cottonseed oil futures rise, fall or remain the same during the fall of 1963?

A I would say it generally stayed at an even keel, an even level. That was the objective of our buying, not to raise the market, not to let it go down; to keep it at a steady price.

Q Do you recall what the condition of the cash oil market in the United States was in that period of time, sir? By that I mean was there a lot of oil around, a shortage --

A That calls for an opinion. I would say that in the evaluation I made for Mr. Klein back in one of those documents.--

MR. FRYER: Your Honor, I object. I think this is unresponsive.

THE WITNESS: I'm sorry.

MR. HARRIS: Maybe if I rephrased the question.

THE COURT: I don't think the question needs to be rephrased. We had various people who have been in the industry, Mr. DeAngelis, to tell us whether

elrf 9 DeAngelis-direct [2798]

there was at that time a surplus, whether oil was plentiful. That is the only question you are being asked. Was oil plentiful or not plentiful during that period? That is in 1963.

THE WITNESS: There was plenty of oil in the country. Each year this country grows, say, 10 pounds of oil, six pounds are used domestically. There is always four pounds used for export. So you figure how much oil there was in the country, it was the same four pounds.

Q Wasn't there a big crop coming in and a big surplus from the year before?

A It is the same each year. The domestic goes up as the crop goes up, and the exports get heavier. To sum up the report I made to Mr. Klein, to Bunge it spells out how much the crop is.

MR. FRYER: Your Honor, this is unresponsive.

Q Do you recall whether exports were going up or down during the summer of 1963?

A The exports were going down.

Q Do you recall whether that information was public, in the sense that it appeared in trade publications or governmental publications?

A No, I would say it wouldn't be public, no.

Q What is that document? Is that the hedge letter?

A This is a letter from Allied Crude to Ira Haupt certifying that all orders to buy or sell cottonseed oil futures --

Q Don't read it. I want to ask if that is --

A -- would represent legitimate hedges, yes.

Q Whose signature is that at the bottom, sir?

A Ben Ratello.

Q Who is Ben Ratello?

A He was controller for Allied.

MR. HARRIS: I offer this document, your Honor.

MR. LIMAN: I have no objection.

MR. FRYER: No objection.

MR. MINNEROP: No objection.

MR. O'DONNELL: No objection.

(Plaintiff's Exhibit 251 for identification received in evidence.)

MR. LIMAN: I also have no objection to that agreement with Haupt.

MR. HARRIS: It would probably save time if I just read this to the jury. It is a short

one sentence letter.

(Mr. Harris read from Plaintiff's Exhibit 251 in evidence to the jury.)

Q Mr. DeAngelis, do you recall if similar letters were given by Allied to Peters, Comenzo and Williston & Beane?

A No.

THE COURT: I want to be sure I understand that answer.

Is that answer no, that no such letters were given to them, or you don't recall?

THE WITNESS: Your Honor, this was a specific request --

THE COURT: I see.

THE WITNESS: -- made by this company.

THE COURT: In other words, no hedge letters were given to the other brokers?

THE WITNESS: Right, because we would be very careful to give out such a letter.

THE COURT: All right. Thank you.

Q But Haupt specifically requested one?

A That is correct.

Q Did you have any contacts with Mr. Haupt the second after the meeting you described?

gwrf 13 DeAngelis-direct [2814]

MR. LIMAN: Objection, your Honor. I think we are talking about the Produce Exchange and cottonseed oil and now all of a sudden we are in Chicago and soybeans. I think that is irrelevant.

MR. HARRIS: This is the pattern that developed, your Honor. Then it moved to New York and continued in Chicago.

THE COURT: What difference does it make? Let's get the pattern in New York.

MR. HARRIS: Everybody -- the same people dealt with Allied in Chicago and the same financings took place.

MR. MINNEROP: I object to that, your Honor.

MR. HARRIS: I'm going to get that.

THE COURT: You can ask him about New York. I don't understand why we have to go to Chicago when the issues are here.

MR. HARRIS: These are parallel markets. It is an interchangeable oil. We heard Mr. Fashena say --

THE COURT: Mr. DeAngelis has indicated that there were such arrangements in New York. I don't understand why we have to go to Chicago to get an explanation of what he has already told us in regard to New York.

gwrf 14 DeAngelis-direct [2815]

MR. HARRIS: To describe how it started and --

THE COURT: What difference how it started? Tell us how it operated.

Q Do you recall when in 1963 you began to stand for delivery in cottonseed oil in New York, sir?

A It was sometime during '63. You must understand, Mr. Harris, Allied was an exporter, and to secure its oil for export it would stand for delivery at any time during the year. That is what its business was, to buy futures, take delivery and export the oil. It was not an unusual operation. We were exporters. If we couldn't secure our needs of oil by buying from A company, B company, C company, we would buy the oil in the Exchange and take delivery.

This could happen at any time in Allied's existence. It accelerated a great deal in 1963, particularly regarding the Produce Exchange and cottonseed oil.

Q Is there any particular reason why it accelerated in 1963 in cottonseed oil on the Produce Exchange?

A It accelerated because Allied was long oil, had no use for it and, therefore, not knowing what to do, accepted deliveries and had either to hold the deliveries or turn them back to someone else for financing. It was part of Allied's net long position

to stay long and accept deliveries.

Q Okay. Speaking of 1963 and the cottonseed oil market, as I understand the way it worked, Mr. DeAngelis, when the delivery month came up -- let's take an example. Was March a delivery month? Do you recall?

A March, let us assume it is March.

Q Allied had a long position. It could either accept deliveries as they were tendered or get rid of its long position.

A Either one or the other, yes.

Q You made a decision to accept delivery?

A That is correct.

Q Was there any reason why you made that decision as opposed to deciding to sell off your position?

A Allied may have needed it for an export order. We were loading an average of one ship a day. There may have been a ship coming in to pick up 20 or 30,000 tonds of cottonseed oil.

To say whether at that moment we accepted delivery for any purpose, we would have to go back to the time the delivery was accepted to see whether we had an order for the oil.

Q I think you said acceptance of deliveries were accelerating in 1963.

A At a certain point we had no orders. Going back to the time we took a specific delivery, we may have had an order for the oil. At a certain point we had no orders for the oil and still we took delivery.

Q Why did you take delivery --

A To stabilize the market, to keep the market steady. Had we tendered them back again, we would have broke the market and devalued all of our inventory and all of our holdings and caused additional margin calls upon us.

Q You didn't have the money for those margin calls?

A That is correct.

Q You stated that you didn't need the oil that you were accepting for delivery because you didn't have export --

A At a certain moment that would be a correct statement.

Q Let's talk about that moment.

Do you remember about when that started?

A In 1963.

After the summer or during the summer or right after the summer of 1963, when our activities in the cottonseed oil market increased and our acceptance

on these transactions?

of deliveries increased, without having it back up export business.

Q When you accepted delivery of oil on the cottonseed oil market in 1963, didn't you have to pay for it?

A Yes.

Q When you bought a futures contract, Mr. DeAngelis, did you pay the whole amount or did you buy it on margin?

A We pay approximately 10 per cent margin when you buy a futures contract for some distant month. When you accept delivery of the oil in a given month, assuming October 1st came and you were long October, on October the 1st generally you would be tendered all of the oil you bought for October and you had to pay cash for it.

Q The whole amount?

A Full amount.

Q Where did Allied get the money --

A It didn't have themoney.

Q -- to pay for this oil that was being tendered?

A It didn't have the funds.

THE COURT: The question was where did you get the money?

THE WITNESS: Not having the net funds, let's

say -- 90 per cent of the time we didn't have the funds. We would, therefore, request of an export company or an exporter or some other company if they would take these warehouse receipts and hold them for us on some arranged type of financing which I would propose to them.

Q What companies did this with you in 1963, sir?

A A number of companies did it. Ralph Peters did it, Bunge did it, at one time or another Continental did it, various companies did it, maybe Williston & Beane did it.

gr DeAngelis-direct [2820]

Q Could you explain to the jury how one of these transactions worked mechanically? In other words, starting with the time Allied was tendered some warehouse receipts in cottonseed oil during 1963 that it had to finance, how did this work?

A If Allied at a certain moment was long oil and assuming it was October, and October 1st came about, generally on the first day whoever sold the oil would tender the oil to Allied through its broker, to Allied's broker.

Allied's broker would then ask Allied for the gunds to pay for those receipts. Assuming it was 100 receipts, it would be possibly a million and a half dollars. Allied not having the funds would generally approach an exporter, let us assume it was Williston & Beane or Bunge or any exporter, and ask that exporter if they would be willing to take these receipts and hold them and pay for them, and at the same time they would pay for them that company would sell in the futures market, the futures cottonseed oil market, a distant month.

Assuming that the oil was tendered on October 1st, we would ask that export company to take the receipts and pay for them and resell those

receipts in the February or March future market where Allied would be the buyer for the oil that that exporter was selling.

This would be the type of transaction we proposed to these exporters.

Q When you say the exporter would sell a distant month and Allied would buy it, you are talking about futures contracts?

A That's right.

Q Was this done ex-pit or in the ring?

A It was done by agreement within the activity of the produce exchange.

Q It was an ex-pit trade, was it not?

A This is thename they give to certain such transactions.

Q We agree, don't we, that this was not done by having floor brokers running into a pit --

A No, it was by arrangement.

Q Right.

When the exporter took the receipt and paid the money for them, where did that money go?

A Generally to the broker who was representing the seller or if Allied had paid for it in one day, Allied would then tender it to the exporter itself.

Q Ultimately the money was used to pay the short for the warehouse receipt; isn't that right?

A That is correct.

Q Did there come a time in this transaction that we are using as an example when an exporter holding the receipt tendered the receipt back to Allied?

MR. LIMAN: Is this a hypothetical case, your Honor?

MR. HARRIS: No, I thought this was an example of what kind of transactions took place in 1963, your Honor.

THE COURT: It seems to me Mr. DeAngelis, as I understood it, has described it.

THE WITNESS: Yes.

A He would tender it back at a later date.

Q Yes.

Did there come a time when they would do that?

A Yes.

Q How did that work mechanically?

A To the exporter that I had originally given the recripts, and he then had accepted the receipts on October the 1st and sold in March the exact amount

that he had been tendered, assuming it was 100 contracts, Allied in March would be the buyer of those back again from the exporter. This would be a means of taking the oil and Allied maintaining ownership of it but moving it in the distant months.

Q When the exporter gave Allied back the receipts, Allied would pay --

A Pay the exporter.

Q Back the money that it had gotten a few months before?

A That's right.

Q And then the futures position was liquidated in another ex-pit?

A Generally that exporter would be asked to give the oil to another exporter because Allied still was not in a position with enough funds to pay the exporter.

Q In other words, Allied didn't have the money several months hence to pay to get the receipt back?

A That's right.

Q So Allied would find another exporter to take the receipt?

A Generally.

gr DeAngelis-direct [2824]

Q And the transaction worked roughly the same way?

A Same way.

Q In this way during 1963 were th[illegible]e warehouse receipts kept off the market?

A That's correct.

Q Can you tell me whether -- I thinkyou already said Bunge participated -- as an example, you used exporter. Bunge participated in these transactions?

A Bunge -- we made such an arrangement with Bunge on numerous occasions.

Q Did you make such arrangements with Continental?

A Possibly on one or two occasions.

Q Wasn't there warehouse receipts that went from Bunge to Continental?

A Possibly.

Q And from Continental to Bunge?

A May have been if the record so showed.

Q Let's take Bunge, for example, of an exporter.

Do you recall whether Bunge made any money by participating with Allied in these warehouse receipt

ex-pit financing arrangements that we have just discussed?

A Bunge would do it if there was some remuneration in there. Certainly they didn't do it for nothing. They would want to be paid for doing it.

Q Wasn't there an agreed upon formula?

A It was agreed upon commission to be paid to them for doing it.

Q Do you recall what that formula was?

MR. LIMAN: Objection on the grounds of relevance. Is it really relevant what the profit is that anybody made on the transaction? I thought this case was about cornering and other things.

MR. HARRIS: It's not about cornering. That's what the defendants keep pointing out, that there was no corner. We'll agree there was no corner.

MR. O'DONNELL: We are now making progress.

MR. HARRIS: The case is about a manipulation due to financing of registered warehouse receipts and holding them off the market.

THE COURT: That comes as quite a surprise to me.

MR. HARRIS: I never said there was a

gr DeAngelis-direct [2826]

corner, your Honor.

MR. O'DONNEL: It's nice to know Mr. Harris has seen the light, your Honor. I would like him to make the same stipulation about squeeze.

MR. HARRIS: I won't make it about squeezes. I think there was definitely a potential squeeze. There was no corner. I never said it in my opening statement. I don't think we ever pretended there was a corner.

THE COURT: The problem I have with this kind of testimony is that I think we can all assume that Bunge and the instances in which Continental or anybody else entered into these financing arrangements, that the intent was to make some profit. It seems to me you are beating a dead horse on that.

MR. HARRIS: This was an unusual type of profit, your Honor. I think I'm entitled to point that out.

THE COURT: Unusual type of profit?

MR. HARRIS: Yes, I think so. I have a lot of documentary evidence --

THE COURT: What do you measure that against?

MR. HARRIS: I would like to bring that out.

exchange.

MR. HARRIS: Let me ask about the components of the profit, your Honor.

In these transactions, we will use Bunge as an example --

MR. FRYER: If he's going to ask about Bunge, let him ask about Bunge, let's not use Bunge as an example.

MR. HARRIS: I'll ask about Bunge without using it as an example.

Q You said you entered into numerous of these transactions in 1963; is that right?

A That is correct.

Q These transactions, did Bunge charge you interest for the money that they advanced on the warehouse receipt?

A Yes. But I would like to say, Mr. Harris, that -- it is my recollection of these ex-pit transactions that I was the one that asked them if they would do it on such and such a basis. The truth of the matter is that I don't believe there was any discussion that they or Continental or Bunge extracted from us. This was what I agreed to. I believe I was the one that put forward: Do you want to take these receipts and,

you made a similar guarantee during 1963?
10758

if you do, I will pay you $2 a ton plus the commission, plus the interest. I believe in honesty -- I'm under oath -- that it was done that way. Unless I'm mistaken, I'm sure that's the way it came about. We offered a piece of business if they would take the receipts,and this is what we were willing to do.

Q I understand. I just want to explore what the piece of business was about.

Bunge received interest from you on the loan in connection with the financing of the warehouse receipt, isn't that right?

A That's right.

Q Do you recall approximately how much interest, what the rate was?

A 7 per cent, I believe.

Q In addition to that, isn't it correct that Allied paid for Bunge's expenses like the storage charges on the oil?

A If I would request Bunge to please take these receipts and put them into a different month, they were doing it for me. Naturally the carrying charges would have to be for our account. This was not anything that they made a profit on. This was a normal carrying charge.

Q Yes, but they didn't lose anything on it eitner, did they?

A No, but if I were to carry them myself, I would have had the same carrying charges.

(Continued on next page)

Q Certainly. Whoever is carrying the receipt has to pay the warehouseman, is that right?

A Yes.

Q So you paid the cost plus the interest, and then on top of that, didn't Bunge get a commission of $2 a ton?

A That was what we agreed upon.

Q What was that, was that profit or margin?

A That was let us say the only thing outside of actual costs that they would make.

Q Because of the ex-pit side of this transaction Bunge was fully hedged, were they not, when they held these warehouse receipts?

MR. LIMAN: Objection on the ground of leading.

THE COURT: All right. That is correct, it's your witness.

A Bunge -- may I answer?

THE COURT: Not in that form. He has to rephrase the question.

Q When Bunge ex-pitted in connection with receiving a warehouse receipt, how would the number of contracts in the ex-pit compare with the number of receipts?

A They would be the same. The exact number.

Q And they would take a futures position opposite from the cash position?

A All prearranged so that at no time would there be any risk to whoever I asked to do it. I couldn't ask them to take a risk to assist me in moving this oil forward.

Q Do you recall whether in your arrangement when Continental Grain acted in one of these ex-pit warehouse receipt financing transactions, whether or not there was a formula established as to what they would receive for performing that service for you?

A It was generally along the same terms and conditions, that they would have no risk, that they would make a nominal return. I mean, it was -- you go to a brokerage house and buy a stock, they charge you commission. You buy commodity futures you have to pay commission. This was generally along the same lines.

Q Have you ever computed or did you compute in 1963 what, if you look into the account the $2 a ton plus the interest rate, plus the fact that costs were covered, what kinds of -- percentagewise, what kind of profits the exporters you dealt with were making

elr DeAngelis-direct [2835]

on these transactions?

MR. FRYER: I object, your Honor. The witness has said only one aspect of that is profit. He very clearly said the interest and storage charges aren't profit.

THE COURT: I am going to sustain the objection because I think what we have before us is too imprecise.

What is the figure going to mean at this time in terms of that? If you feel that the figure is important, put some evidence on and we will have a precise figure, if you think that is what needs to be done.

MR. HARRIS: I was just trying to establish whether the witness ever computed it, your Honor. I do intend to put that on later in the trial.

THE COURT: Then do it properly.

Q Do you recall, Mr. DeAngelis, attending a meeting at banks' offices in early 1963 when this type of financing that we have just gone through was developed, the idea broached for the first time?

A I would say yes.

Q When I say for the first time, I am talking about cottonseed oil.

have Bunge people here. My point is, he ought to offer it through Bunge people. It's entirely internal.

MR. HARRIS: There is no dispute that it's accurate and Mr. DeAngelis said it fairly reflects what was discussed at the meeting.

THE COURT: He has said that, but he can't identify the document. I have to sustain the objection. It is not anything that we know that Mr. DeAngelis had seen.

MR. HARRIS: No, he didn't.

THE COURT: What it reflects, apparently, is the agreement that was entered into between him and Bunge when they meet.

MR. HARRIS: Right.

THE COURT: But if Mr. Fryer insists that it be identified when his people come, then we will wait.

MR. HARRIS: I will have to save it.

Q At the meeting that we have been talking about in February with the Bunge people, did anyone indicate for whose account these warehouse receipts would be held while they were in the possession of Bunge?

A They would be for the account of Allied.

Q Who would be the ownerof the receipt?

A Bunge would be the owner.

Q For the account of Allied?

A We made the request of Bunge, would they take these receipts and hold them for us by the following method and operation. Who would own them physically, if they paid fo r them,they were paying for them on our instructions. They belonged to us, but it belonged to them legally, or how is that. They did it on our request.

Q Let me ask you this: At the meeting did you have any idea who had the final say as to the disposition of these receipts?

A For agreement, we did.

Q At that meeting was any agreement signed incorporating this understanding?

A I don't believe so.

Q At the end of that meeting was there an agreement reached, do you recall, a final agreement that became effective immediately?

A Yes, it was subsequently done.

Q Did the Bunge people at the meeting say they have to check with anyone, as you recall?

elr DeAngelis-direct [2844]

THE COURT: There is no objection, it's received.

(Plaintiff's Exhibit 86 was received in evidence)

THE COURT: We will adjourn until Monday morning at 10 a.m.

(The jury left the courtroom)

MR. O'DONNELL: I wish to raise the subject, but I heard your Honor say you had something to take up. Would you like to hear from me?

(Witness excused)

THE COURT: Mr. Harris, I am having serious difficulty in some aspects of the evidence that seems to me tobe really as you know, not only not essential, but is not moving the case at all. I am hesitating to rule on it, becase I obviously don't understand what you are trying to get at.

As I know it now, as Mr. DeAngelis has explained these warehouse receipts and the ex-pits, what he was doing was buying time and financing this oil and everything it refinanced, it's the same oil moving around from one person to another, which as far as his answer was that his position remained the same in regard to it, it seems to me to be abundantly

elrf 6

the fact that he felt that that would lower the price. And then he kept the oil and engaged in these practices, the financing, et cetera, in hopes that the price would stay at a certain level and eventually I guess in the hope that some of his deals abroad would go through.

I understand that part of it. All right, Mr. O'Donnell.

MR. O'DONNELL: It is a long week but I thought we could perhaps make some progress in shortening the future length of this trial. Mr. Harris in the complaint in this case and also in the statement of contentions in the pre-trial order, raised the issue of whether there was a corner, squeeze or manipulation of the market.

Today, your Honor, he said in a statement that this case did not -- he was not contending that there was any corner of the market, and I would be glad to so stipulate that from now on if we can get corner out of this case and your Honor can so tell the jury we could at least eliminate that.

MR. HARRIS: I think I already did that.

MR. O'DONNELL: That is the first time I ever heard it.

THE COURT: I can do that, but it wouldn't

save us time.

MR. LIMAN: He is improvising, your Honor. We spent hours with people on the stand, and now he is changing his theory. I think he should tell us what his theory is going to be.

THE COURT: I am inclined to think that is so.

MR. HARRIS: Your Honor, we are talking about a potential and an actual thing. We don't contend there is an actual corner and we never contended there is an actual squeeze.

We are talking about what actions gave rise to a regulatory duty which was supposed to be stopped before it developed into a squeezing action. Whether I made any of these statements before, your Honor, in the bases for claimed liability in the pre-trial order, we point out, specifically paragraph C, that many of the ex-pit transactions we refer to the increasing volume, violated the rules and bylaws of the Exchange. That is what we contend was a manipulation.

This case concerns manipulations and potential corners, and more of squeezes than corners.

THE COURT: The ex-pit transactions violated the rules of the Exchange? Everybody thus far has testified they did not.

Q And in Exhibit 85 which I just read, when you referred to 2,000 receipts, were you talking about registered warehouse receipts?

A Yes.

Q And those were receipts that Ralph Peters was financing for you at that time?

A Yes, sir.

THE COURT: Does that mean that Peters had the 2,000 sheets as security for a loan to you?

THE WITNESS: Yes, sir.

Q Mr. DeAngelis, did there come a time in 1963 when Allied did not have the funds to repay a loan made by Bunge to Allied in connection with an ex-pit financing transaction?

A Yes, I believe so.

Q What did Allied do in that circumstance?

A We would ask Bunge to extend it to a further month.

Q Did Bunge do that?

A I would say generally yes.

Q Can you explain to us how that worked?

A We had during that time placed some registered warehouse receipts with Bunge, with the corresponding short sale by Bunge in the distant month, and Allied

on the opposite side on the long side of the same trade. There came a time when Allied was to take delivery of the oil at the agreed upon later date, and as Allied was not in a position financially to conclude the transaction as previously agreed, it was then proposed to Bunge to roll the same receipts forward to a more distant month, which I believe they did.

Q Did this rolling forward involve any ex-pit transactions?

A It would have to, yes.

Q Can you explain how the ex-pit transactions took place in the roll forward, you just described, roll over?

A In giving to Bunge or any other company a registered receipt Allied would simultaneously buy in the exchange the identical amount of contracts which would be sold by Bunge on the other side. This would be an ex-pit transaction. It would be done on the floor in the Exchange in full view of all the members of the Exchange.

Q That happened on every financing of a registered warehouse receipt?

A Where such financing or roll over or roll forward was requested.

Q What I am trying to ask you now is, did there come a time that you just described when Allied couldn't repay the loan when you did a subsequent ex-pit?

A That's right, that is correct.

Q How did that subsequent ex-pit work?

A The long and short sales would have to be undone and reinstated in the more distant month.

Q That would be done by another ex-pit?

A That is correct.

Q Who handled the details of that sort of transaction for Allied?

A Mr. Gittleman, always.

Q On Friday, Mr. DeAngelis, you indicated that it was you who suggested this ex-pit financing arrangement to Bunge and Continental --

MR. LIMAN: Objection to the paraphrase of the testimony. He said he suggested it to Bunge that he also suggested it to Continental, but I never said that he suggested it to us collectively.

MR. HARRIS: I didn't mean collectively.

MR. LIMAN: That is the problem of always saying Bunge and Continental.

Q Separately to Bunge and Continental. Do you recall saying it was your idea?

Q In any event, going back to that meeting in February, did Mr. Forti and Fornari tell you they had to get approval?

A I believe so, yes.

Q Did they tell you who they had to get approval from?

A They mentioned Mr. Klein.

Q Subsequently, did you learn that Mr. Klein had approved the transaction?

A That is correct.

Q Turning to Continental, I believe you said you spoke to Mr. Totah about this --

A Yes.

Q -- arrangement --

A Yes.

Q -- with Continental?

A Yes.

Q Did Mr. Totah tell you that he had to get any approval of anyone of Continental?

MR. LIMAN: Objection to leading, your Honor.

THE COURT: The objection is sustained.

Q What did Mr. Totah say at that meeting about this --

you made a similar guarantee during 1963?

A I made it to Peters and Continental, I made it to all the companies, the same proposition.

Q Did Peters take you up on the offer?

A Yes.

Q Did Continental?

A Yes.

Q One other thing, Mr. DeAngelis. At page 2796 you testified on Friday that during September, October and November of 1963 your cottonseed oil position was not hedged; do you recall that testimony?

A That is correct.

Q What about July and August of 1963; was your position in cottonseed oil hedged then?

A No.

Q Mr. DeAngelis, do you recall the events of the week, the seven-day period that took place approximately November 13-November 20, 1963?

A Well, I would say yes; to some degree. There were many events that happened that week.

Q Can you describe briefly what your futures position was in cottonseed oil at that time?

A I believe in that week we held approximately 8000, possibly more, contracts of cottonseed oil.

Q And do you recall what happened, if anything, to the cottonseed oil market during that period of time?

A The market was under pressure. There were many sellers pressing the market down during that week.

MR. O'DONNELL: Your Honor, can we have it clarified whether the wintess is speaking about the futures market or the cash market?

THE WITNESS: I was talking about the futures market.

Q Were you continuing to purchase contracts during that period, sir?

A We were generally buying, to keep the market at an even level, if we could.

Q Did there come a time when you stopped buying?

A Yes. It was during the last week.

Q Can you describe what happened then, sir?

A One of the incidents that caused me to reevaluate our position, our situation, was an incident that happened, I believe in the last week, where I received a telephone call from Mr. Kenner of Bunge --

MR. LIMAN: Your Honor, can we have a limiting instruction with respect to any telephone

conversation with Mr. Kenner that he is going to testify to?

MR. FRYER: Your Honor, I object as unresponsive. I'm not sure that this is responsive to the question that the witness was asked.

THE COURT: On that I have no way of answering that question for you, Mr. Fryer. You apparently know more about what's coming up than I do. So I have no way of responsing to that. I can respond, of course, to Mr. Liman's request. What you are about to hear about a conversation-- who was it at Bunge that you talked to?

THE WITNESS: Mr. Kenner called me, your Honor.

THE COURT: Of a conversation between Mr. DeAngelis and Mr. Kenner of Bunge, you will understand and realize that that conversation has no relationship to any of the other defendants. It only will relate to Bunge. I don't know at this point whether it can even be said to relate to Mr. Klein, but it will relate to the Bunge Corporation.

All right.

Q Mr. DeAngelis, can you tell us as best you can recall now what Mr. Kenner said to you and what

you said to him during the course of this phone conversation?

THE COURT: And when was it, if you can recall the date?

THE WITNESS: Your Honor, I placed this call probably five or six or seven days before the signing of the position in bankruptcy. I placed the call probably about the 14th or 15th or 16th. I remember the conversation quite clearly, and the conversation went as follows, the the best of my ability.

Mr. Kenner came through the switchboard and the operator told me Mr. Kenner is calling. And Mr. Kenner got to the phone and said, "Tino" -- which is what they called me, your Honor -- "Tino, I am calling you from an outside phone. I just received some startling information."

I said what is it.

He says, "Is it true that you are holding" -- and he read off to me our exact cottonseed oil position and our exact soybean oil position.

Now, no one but myself and Jerry Gittleman knew that position. It was locked between the two of us.

When he read to me on the phone the exact

position, so many Decembers, and so many Januarys, so many Februarys, and he kept pressing me whether those figures were correct.

(Continued on next page)

Q Let me just stop you for a second. You are talking about futures, aren't you?

A Futures only. When he read these figures off to me and kept pressing me for an answer, I didn't know what to answer him, so I said as follows:

I said, well, Mr. Kenner, you are reading off to me a lot of figures. I don't know whether they are correct or incorrect. I don't know where you got them from. All I can say is we have a substantial position. Whether the figures you are reading off to me are correct or not I can't say at this moment unless we take an audit of our position.

But the figures he read off were correct because I had them locked right in my drawer. By opening the drawer and reading down, he was absolutely correct. Then he kept pressing me on the phone whether they were correct or not. And I refused to divulge whether they were correct or not.

Then he said to me, "My God, do you realize what a penny drop in the market means,that you have to put up margin call?"

He said, "Do you have that much money to put up if the market drops?"

And at this moment I, from this conversation,

I knew that Allied's position was no longer a secret in our organization, that it was now public. I asked him where he got those figures and he refused to tell me. And then the conversation ended.

That was one of the contributing factors in the last week of my deciding to give up the battle.

Q When Mr. Kenner said to you, do you know how much money you would have to put up if there was a one cent drop in the market, did you respond to that?

A No, because it ran into the millions of dollars and he knew what it was. He read off a long list of some 15 or 16,000 contracts, it would have been up close to 15, 20 million dollars. Without calculations there, I knew it and he knew it. That is why he asked me the question specifically, do you have that type of money if the market drops a cent a pound. This is the answer, Mr. Harris to your question.

Q Mr. DeAngelis, at the end of your statement you said that that was one of the factors that contributed to your decision to give up the battle. Can you tell us what you mean by give up the battle?

A Well, maybe that is my own characterization of what went on in the last two years of Allied's existence, and possibly I shouldn't state my opinions

here. But it was part my giving up of a long list of wrong things which I did, bad things, and I reflected on those wrong things that I did, and an equal amount of very wrong things that other people did to me.

So I evaluated all of them in the last week and decided to give up.

Q When you use the term battle, are you talking about the battle to keep Allied afloat?

A And the battle for others to bury Allied.

Q And you also indicated that Mr. Kenner's telephone conversation with you was one of the contributing factors?

A Yes.

Q Can you tell us what the other contributing factors were?

A The continual doing and causing to be done on my part of some very wrong things.

Q Isn't it also correct, Mr. DeAngelis, that you were having greater difficulty in that period getting financing?

A That was one; another contributing factor. Another contributing factor was that the CEA was seeking some specific information regarding Allied's position and investigating Allied's position against its sales.

That was going on. That was also a contributing factor.

Q As a result of your decision to give up the battle did Allied stop buying contracts in the futures market?

A Yes, it did.

Q What happened to the price of cottonseed oil futures after Allied stopped buying contracts?

A The price dropped drastically.

Q As a result of that drop were you called upon to make margin payments?

A Yes.

Q Did you make such margin payments?

A We could not make margin payments.

Q Just to finish up the line, I believe on November 19th you filed a petition in bankruptcy, is that correct?

A That is correct.

Q During 1963, Mr. DeAngelis, do you recall being contacted by any official of the New York Produce Exchange with regard to your activities in cottonseed oil futures?

A Yes.

Q Where would the shorts get that oil?

A They would have to buy it and refine it and deliver it.

Q Was that a relatively simple matter in your judgment?

A For that magnitude of contract, that magnitude of numbers would have been quite difficult, in my opinion.

Q Can you tell us why, sir?

A The oil, we are talking about a four-week period, it is only an opinion I can give, that to move 2,000 tank cars of oil into position to be refined and then delivered to the refinery into a registered warehouse would need logistically an enormous project.

Q Can you elaborate a little more on why logistically it is an enormous project?

A The cottonseed oil belt extends from probably Texas, Arizona, North Carolinas. Some of the registered space may not have been in that area. That would be one difficulty. The second difficulty would be who the shorts were. Were they were speculators or were they producers, were they exporters who had refining capacity.

This would be a second evaluation, and I am

only making the evaluation now in answer to the question.

The third evaluation would have to be the availability of tank cars to move this oil in such a short time, this quantity of oil.

So you have three or four factors that would involve the possibility of deliveries against the December open interest.

Q Do these various factors you list entail additional expense?

A Refining of the oil costs money and movement of the tank cars costs money. I imagine it would all be taken in consideration in the sale that the short said, whoever the short may have been.

Q Now, you mentioned one of the factors is whether the shorts had refining capacity?

A Whether one or all of them had refining capacity.

Q Looking at Exhibit 1, which lists who held the short position, the first on the list is Continental Grain.

Do you know whether they had refining capacity in the fall of 1963?

A I don't know. They may have had contractual arrangements for refining, I can't say.

Q In other words, Allied had no account at Merrill Lynch and Merrill Lynch did not finance Allied in any way, is that correct?

A That is correct.

MR. MINNEROP: I have no further questions.

gwrf 3 DeAngelis-cross 2919

A That is correct.

Q You mentioned you dealt with several people at Continental Grain and you remembered the name of obviously Mr. Totah and Mr. Stafford.

Do you recall that testimony?

A Yes.

Q You said there was a third gentleman.

Does the name George Worthington ring a bell?

A No, that is not the name.

Q Was it John Ferretti?

A No.

Q You don't recall the name of the man?

A I'm sorry.

Q In any event, is it correct that you had any business dealings with Harold Vogel?

A No.

Q When you say, "No," you never had any business dealings with Harold Vogel?

A Not that I remember.

Q Is it a fact that you never disclosed Allied's position to Continental Grain Company?

A That is correct.

Q And you have testified that you kept this

position locked in your drawer; am I correct?

A That is correct.

Q Why is it that you kept it secret like that, sir?

A Well, keeping it locked was probably the wrong word. I kept it in my drawer and naturally my office was locked.

Q Why did you keep it secret?

A Because it was information which belonged to Allied and no one else.

Q Could Allied have suffered some consequences if its position became known?

A Yes.

Q What?

A Well --

Q In other words, I want to know why is their position a secret?

A In the trade?

Q Yes, sir.

A Let us assume that it would be divulged that we owned the same four pounds of oil that we are talking about of the same ten pounds in any given given year. We know that six pounds of the ten pounds are used domestically. Of the four pounds, if Allied

holds three pounds and there is no export business for various reasons, and it is divulged that Allied owns three pounds of the four and there is no possibility of export, that information would be highly dangerous to get out.

Q So you took every step to keep that information confidential; am I correct?

A That is correct.

Q Is it fair to say that you had no conversation with anybody from Continental Grain of the nature that you testified you had with Mr. Kenner of Bunge?

A Absolutely none.

Q And Continental Grain never asked you for information as to your position; am I correct?

A That is correct.

Q Am I correct that in November of 1963 you didn't know what Continental Grain's position was?

A Absolutely not.

Q Is it also true, so I can cover some matters for Mr. O'Donnell, that you did not disclose your position to the Produce Exchange?

A That is correct.

Q Is it true that you did not disclose to Continental Grain or the Produce Exchange what your

strategy was in the fugures market?

A Well, the word strategy -- there is no strategy.

Q Your intentions. Did you tell them I intend to buy contracts?

A No, I did not disclose that.

Q You kept that a secret, too?

A My operations were kept within our organization.

Q And you never disclosed to Continental Grain that you were acting to try to support the price of futures; am I correct?

A That is correct.

Q And you never disclosed that to the Produce Exchange; am I correct?

A That is correct.

Q Allied was a customer of Ira Haupt & Co.; am I correct?

A That is correct.

Q And I understand that you have been called here as a witness by the Trustee of Ira Haupt; am I correct?

A That is correct.

Q Were you told that there are allegations

Let us assume for a moment that the Yugoslavians, which was one of our big customers from 1946 on, would want to buy 20,000 tons of lard.

Lard Allied would have to buy from meat-packers.

There is no storage, no facilities to store lard. The Yugoslavs may have wanted to buy that lard for delivery in three or four months.

How can we effect such a sale to the Yugoslav Government for delivery of a product not traded on any exchange? It must be bought by meat-packers for delivery in four months from today in order to give a price to the Yugoslavs which they wanted each and every year. I was a supplier all through the years. Allied had to buy something in the market. So Allied would buy the closest thing to lard, being that lard wasn't traded on the Exchange, and buy soy-bean oil. It would buy futures. If the price of lard would go up, hopefully the price of soybean oil would go with it. One related to the other, used for identical purposes, lard for cooking and soybean oil for cooking.

Q Is the same thing true of cottonseed oil, that it was natural for you to be long cottonseed oil in the light of your business as an exporter?

correct?

A That's correct.

Q Do you recall that in the summer and fall of 1963 you gave copies of those contracts, those fictitious export contracts, to Ira Haupt & Company; am I correct?

A If that is what you have in evidence, I would say that is correct.

Q You recall that, don't you?

A If you show it to me, I would know whether it's so or not.

MR. LIMAN: I will have marked a series of letters from Allied with contracts attached.

Q I will show you Defendants' Exhibit 24 for identification, which is a contract, a purported contract with Compania Hispana, and it shows on it that it was given to Haupt; am I correct, in July of '63?

A Yes.

Q That was a fictitious purchase order; am I correct? Do you remember that?

A That's correct.

Q If I show you Defendants' Exhibit 25 for identification, would it refresh your recollection that

elr DeAngelis-cross [2949]

Q So far as you are aware, Mr. DeAngelis, did all of your ex-pit transactions conform with the rules of either the produce exchange or the board of trade, where they occurred there?

A Yes.

Q There have been many accusations that have been made against you in connection with your activities, am I correct?

A Well, they wrote a 400-page book with them, so --

Q You weren't indicted, were you, for making illegal ex-pits, were you?

A No --

MR. HARRIS: Objection.

THE COURT: Sustained.

Q Did the Chicago Board of Trade honor all of the ex-pit transactions that you put through?

A Yes, it was a perfectly normal thing to do.

Q Do I understand from your testimony this morning that these ex-pit transactions were done openly in the sense they were posted on the board of the produce exchange or Chicago Board of Trade?

A Absolutely.

Q When did an ex-pit, the party on the other

side would buy warehouse receipts from you, am I correct?

A That's correct.

Q And these were registered warehouse receipts?

A That is correct.

Q I think in your testimony either you or Mr. Harris said they were issued by the produce exchange; they weren't issued by the produce exchange, they were issued by the warehouse, am I correct?

A That is correct.

Q And they were registered with the produce exchange?

A That is correct.

Q And these were genuine warehouse receipts, not the kinds that you have described that had shortages?

A That is correct.

Q From your point of view, am I correct, these ex-pit transactions enabled you to get financing; am I correct/ You were able to get financing on warehouse receipts that you would either have to pay for or keep yourself?

A That is correct.

Q And since you didn't need the oil immediately, you wold the warehouse receipts and took back a long position, am I correct?

A That is correct.

Q And when you did this, was it your hope that at the time that your long position would mature the export business would be there so that you could use the oil?

A Absolutely.

Q And do I understand that during this period between the time you sold these warehouse receipts and the time that the contract would mature, that the buyer would be free to use that oil if he had an export contract?

A (No response)

Q Do you understand my question?

A Yes, I am trying to think of the answer, Mr. Liman, to answer your autstion. I would say while he did it at my request he would legally have a right to do what he wanted with the oil.

Q When we say the oil, these warehouse receipts represented actual oil in storage, am I correct?

A That is right.

Q So that if an exporter who receives one of these receipts from you had an export order to fill he could use that oil or he could buy other oil and use that, am I correct?

A That is correct.

Q And that was your understanding?

A Well --

Q Did you ever say anything to the contrary to anyone?

MR. HARRIS: I don't think the witness finished his answer, your Honor.

A Mr. Liman, if I asked an exporter to take these cash receipts and hold them or buy them off me and to sell the distant month and I would buy the distant month, that stands on its own, it's legal. If that exporter who I gave these receipts to needed that oil or wanted to use it, he had every right to use it without consulting me, although that may not have been the agreement we had.

Q Did you, sir, ever say to anybody at Continental Grain that they couldn't use the oil that was represented by a warehouse receipt?

A I don't believe I said that, but I made it clear that they were doing this for me, and I would take the oil back later. He could have done what he wanted with it.

Q When you say they made it clear they were doing it for you, you were the one asking for the financing, is that correct?

A Yes.

Q And you made it clear that if the Continental -- to use my client's name -- wanted to put those back to you, you would take them, is that correct?

A That's right.

Q But you didn't insist that they put them back to you, did you?

A No, sir.

Q In fact, the long position that you took was in the essence of giving them a put, is that correct?

A That is correct.

Q Let's talk about this $2 a ton markup you have heard about. Am I correct that there were 28

elrf 2 DeAngelis-cross 2954

metric tons in a contract?

A Yes.

Q So that for engaging in this transaction an exporter would get $56 per contract, am I correct?

A That is correct.

Q As a businessman you know the difference between a markup and what is real profit, don't you?

A Yes.

Q And you understood that there were various expenses that any company has that it would have to satisfy out of the $2, am I correct?

A I would say they would have certain expenses.

Q Every company has rent, overhead, general, office and administrating, am I correct?

A That is correct.

Q Am I also correct, sir, that if Continental in one of these ex-pits with you entered into a sale of the futures and you entered into a purchase, that if the price of futures went up, that Continental would be called upon to put up variation margin, am I correct?

A No question about it.

Q And that variation margin would be as much as $600 per point, am I correct?

A Exactly.

Q So out of this $56 markup it would also have to bear whatever its interest charges might be on any margin it would have to put up?

A That's right.

Q Would it be fair to say, Mr. DeAngelis, as you look back on these, that you never considered the $20 figure an unreasonable markup?

A I never did.

Q And still don't?

A That is correct.

Q That was the figure that you quoted and was accepted by my client, Continental?

A That's right.

Q I asked you before whether you or anybody at Allied had ever told Continental Grain that they were interested in engaging in these ex-pit transactions as a way of supporting the market and you said no. Would that also be true, that you never said to any official of the Produce Exchange that you were engaging in the ex-pit transactions to support the market?

A I never said that.

Q Did you ever tell Continental Grain what price you had paid for the receipts that you would be then selling to it?

A No.

Q You kept that quiet, too?

A Well, if you ask somebody to do something, you can only do it at the then market price on that day. Whether I paid more or less for it before was of no interest to them, or my telling them.

Q In answer to a question this morning from plaintiff's counsel, you testified, as I recall, that you could not always buy oil on a cash market, am I correct? That some of the suppliers wouldn't sell to you?

MR. HARRIS: I don't think we went into that on mine.

THE WITNESS: I don't believe in my last statement here in the last several days, that that ever came up, Mr. Liman.

Q I thought you had said something about that. But did you find that some of these crushers who were also your competitors, refused to sell you oil?

MR. HARRIS: I object, your Honor. I don't think this is within the scope of the direct testimony. It seems to me it relates to what Mr. Liman --

THE COURT: The objection is sustained.

Q Mr. DeAngelis, were you using the futures

market to buy oil with the expectation that you would at some point take down that oil for resale?

A The prime reason was the support for pricing the oil. The second reason was to acquire supplies. But the prime reason was to support the prices. Secondary was to generate supplies.

Q The first reason, to support the price, that was a reason that you kept to yourself and didn't disclose, am I correct?

A That is correct.

Q You were asked about your dealings with Haupt. Am I correct that it was Haupt & Co. that solicited the business from you and not vice versa?

A Yes.

Q You testified that you met with a Mr. Ira Haupt, whether he was the second, third or fourth, but he was the real thing; am I correct?

A I met with Mr. Haupt.

Q Before you met with Mr. Haupt you had a meeting with various Haupt representatives at your office in Bayonne; am I correct?

A That is correct.

Q Did Haupt have with him on that occasion his bankers from Chase?

Q Do you remember getting any phone calls from anybody at Haupt on the evening of November 18?

A I remember receiving a phone call from someone at Haupt.

Q Do you remember who it was?

A I don't remember whether it was the 18th or not, but it was in the last days of Allied.

Q Okay.

Now, tell us who the call was from, if you recall, and what was said.

A I imagine the call came from Mr. Stevens, although I'm not sure, at this date I'm not sure, if you can show me testimony previous as to who I spoke to, but I can recall the gist of the conversation and we can settle as to who made the call.

Q Will you tell us the gist?

A I was staying at that time in a hotel in New York. I lived at he New York Athletic Club for three years, and I moved across the street to the Park Sheraton Hotel. And I received a call, I believe it was -- it could be the 18th, in the evening, it was about 8:30; it may have been from Mr. Stevens, unless you can show me differently.

Q The testimony says they were at Haupt, it

doesn't name the person.

A A call did come, and it was to the effect that Haupt was trying to sell these contracts of oil that it held themselves. That call did come.

Q What was said to you about it and what did you say?

A They had told me on the phone that they decided that they were going to try to sell some part of the position to someone else, and they had asked me in the previous two or three days if I could sell some of the position elsewhere, and I told them that I was trying to do that, but I had not done it up to that moment. Then came the phone call, probably on the evening of the 18th, during the evening where I was told that they were going to sell this position themselves, or tried to sell it and we had a conversation about this.

Q Would you tell us about that conversation?

A Well, I told the caller that if it was my understanding that he was going to offer my position to someone else in the United States or anywhere in the world, that the net result of that action would be a disaster; that he would be doing two things. He would be telling the whole world that he wanted to sell this enormous quantity of oil, and in the end he would only

do one thing, not sell a contract of oil, he wouldn't sell anybody, but he'd be telling everyone that they had a large quantity of oil to sell.

I told him it would be for everyone a disaster if he embarked on that course of action. And I warned him, I told him, whoever the caller was, and I think it was Mr. Stevens, that if he did that, the responsibility would be entirely his own.

Q What did Mr. Stevens say?

A I don't remember, except that whoever it was was intent on doing it.

Q Did you suggest to Mr. Stevens or whoever it was at Haupt you spoke to that instead of trying to unload your position, he ask the produce exchange to suspend trading?

A I may have told him that, yes.

Q Is it your best recollection, sir, that you were told that Haupt was insistent on trying to sell the oil privately by calling up a number of other people?

A THat is what was told to me in this telephone call.

Q Were you told that they were trying to offer your position at 78 a pound?

A It's many years ago, but the conversation

was a dramatic one and whether the price of the oil was mentioned, I can't say. If you can assist me with some previous testimony, it may refresh my memory.

Q I will read to you from page 97 of your prior testimony and ask you if it refreshes your recollection, this is in the Haupt proceeding.

A This testimony of course was made in 1963 or 4.

Q It was actually in 1965. It was two years after the event.

"Q What contacts did you have with anyone from Haupt during the evening or night of November 18, 1963?

"A Having told Haupt in repeated calls that we were going the best we can to meet the situation, that evening I left the plant rather late, it must have been 8 o'clock, and I went to the hotel where I would stay overnight.

"Q Which hotel was that?

"A That was the Park Sheraton Hotel.

"Q In New York City?

"A Yes. They at Haupt started to call me possibly at 10 o'clock and continued the calls all through the night. I would say the calls, there must have been seven or eight calls during the night from

Haupt's office and either it was Newman or Stevens alternating on the phone, either one or the other telling me that they were endeavoring to sell the caseh receipts which they held which belonged to Allied on which they advanced the loan. They then told me that they were endeavoring to sell in lots of seven or eight thousand receipts, some large amount that they were trying to sell and mentioned a price of -- a familiar price of 78 a pound.

"Q At that time what was the market?

"A I would say the market was 10, between 10 and 11.

"Q Continue.

"A That was the first time I heard that and I couldn't believe my ears. I said, are you people crazy? I said do you mean to tell me that the market is closed and you are trying to sell my oil for those prices? I said you must be out of your mind.

"I said, do you know what this is going to do, and they said no. I said, you are putting yourself out of business, and you areputting me out of buisness without any question because the monetary difference between the market value of oil, one tank car of oil if it is 10 cents on the exchange, that is the

price of oil.

"But I got the imprssion that they were contacting buyers all overthe world, they were calling them in the southwest, they were calling Europe, they mentioned names which I had never heard of. They said they had a buyer in Memphis or somewhere."

Do you recall that, sir?

A That is substantially correct.

MR. HARRIS: Your Honor, for the record, I believe the fact can be brought out that this is in reference to soybean oil and not cottonseed oil.

Q Mr. DeAngelis, let me bring it out, were they trying to sell both soybean oil and cottonseed oil?

A I believe that they were referring here to cottonseed oil.

Q Do you remember saying also in your testimony at page 101, "I believe I am not sure, that I mentioned to them during the course of that night that -- in fact I am positive of it, I said if I was you and you have a problem and you want to dispose of this oil, you are going to at it in a very bad way. You are ruining yourself and you are ruining everything. I said, go into the Exchange tomorrow morning and tell them you have got a problem and let them suspend trading."

Do you remember giving that testimony?

A That is correct.

Q And you told that to Haupt on the evening of the 18th, does that refresh your recollection?

A It does, right.

Q On the morning of the 19th did you have a visitor from Haupt?

A Yes.

Q That was a Mr. Newman?

A Yes.

Q Did Mr. Newman ask you to give him some

Q Is it a fact that you never disclosed to my client Continental Grain Company that you were forging receipts?

A That is correct.

Q Or to the Produce Exchange?

A Or to anyone else.

Q And you never disclosed to my client Continental Grain that you had a shortage of oil against which American Express was issuing receipts; am I correct?

A Never.

Q And the same is true of the Produce Exchange?

A That is correct.

Q You gave Mr. Newman one of these receipts.

Do you recall that Mr. Newman at Haupt asked you for another receipt to secure his father, who was an investor at Haupt?

A Yes.

THE COURT: When is that? Is that on the morning of the 19th?

MR. LIMAN: The morning of the 19th, your Honor.

Q You are aware now, sir, are you not, that the Produce Exchange suspended trading on the afternoon

gr1 DeAngelis-cross 2990

Q If I represent that it carried 1000 cottonseed oil futures contracts and 2500 soybean oil contracts, would you argue with that statement?

A No.

THE COURT: What period are you talking about?

Q This was in the fall of 1963, was it not, sir?

A I would say if you have the records, that would be correct.

MR. FRYER: Excuse me a minute, your Honor.

(Pause)

Q I would like to show you a copy of a confirmation from Bunge to Allied and ask if that refreshes your recollection as to what the date was on which Bunge purchased those futures contracts for Allied?

A November the 12th, 1963.

Q Right.

Those are cottonseed oil futures contracts?

A That's correct.

Q I would like to show you another letter and ask you if that refreshes your recollection as to

whether it would be easy or difficult or what was required to register some 2,000 contracts, cars of oil.

Q Yes.

A So I just was merely giving my opinion.

Q That's right. With respect to November 1963, Mr. DeAngelis, you said that with respect to these ex-pit transactions, if I followed your testimony correctly, you were putting them back into a distant month from November, one of the reasons for doing that was so that you wouldn't be selling the warehouse receipts, is that right, and thereby depressing the price.

A That was one of the reasons, yes.

Q That was only one of the reasons, because you had other reasons for wanting to get that oil back in the distant month, March, or whenever it was, is that so?

A That is correct.

Q That is when you expected that logjam to be broken and the export business to be booming, is that not right?

A That's right.

Q Is it also not right, sir, that at that time you did not tell anybody, and I am referring particularly

Q Where did Allied get the oil from that it sold to Bunge and Continental and the other exporters?

A Allied was the largest customer of the VOEC members. Because Allied was a large customer, buying from the Vegetable Oil Export crushers, they got together and decided that it would be better for them if they would get together themselves and fix prices and they sell the oil.

Q In other words, Allied bought the oil from the component companies of VOEC and, in turn, sold it to Bunge and Continental and other exporters who, in turn, sold it to foreign governments in competition with the companies forming part of VOEC?

A That is correct. The 15 crushers comprised 95 per cent of all the soybean oil in the United States.

elr DeAngelis-redirect 3049

Q How was it that you were able to buy the oil from the crushers and in turn sell it to Continental and Bunge, who can in turn make an offer to sell it to a foreign government at a price lower than the crushers could do it themselves?

A Very easy --

MR. LIMAN: Objection.

THE COURT: The objection is sustained.

Q Mr. Liman showed you a number of contracts with Continental Grain that were contained in Plaintiff's Exhibit 68 for identification and also set forth as Defendants' Exhibit 186?

A Yes.

Q Did any of those contracts involve registered warehouse receipts?

A It's possible. I just glanced through them briefly this morning

Q Without taking up a lof ot time, the ones you glanced through were they --

A I haven't seen any registered warehouse receipts.

MR. LIMAN: Mr. Harris, I will stipulate with you I believe they are all field warehouse receipts, but I haven't read them in the last few

questions, as if you are treating them as some separate entities with all of them.

Proceed.

MR. HARRIS: I beg your pardon, your Honor. I was trying to establish that they were one page. I'm not being as clear as I should be.

Q I believe you indicated in response to one of Mr. Liman's questions that Continental could have done whatever it wanted with the warehouse receipts it was holding in one of these transactions.

A I would say that is a correct statement.

Q In fact, however, sir, during 1963, didn't Continental always give the warehouse receipts back to you in return for repayment of the loan?

A That is what they have done, they did, yes.

Q And isn't that the same situation with regard to Bunge?

A Yes.

Q And wasn't that your understanding when you negotiated this arrangement with Continental and with Bunge?

MR. LIMAN: Objection to the form of that question. I object to what he said to them and what they said to him.

Q And what about with Bunge Corporation? Do you recall doing soybean oil --

A I believe we did with Bunge.

Q Isn't it a fact that the Chicago Board of Trade did investigate Allied Crude's trading during 1963?

A They sent a representative to talk to us. They wanted certain records. We gave them whateverthey wanted.

Q When you say they sent him to talk to you, where did he come?

A A gentleman from the Chicago Board of Trade came to Allied's office in Bayonne on numerous occasions. At the beginning he came, they asked certain records and certain information which we gave him, having always to do with the trading on the Chicago Board of Trade. We gave him whatever information he wanted.

Q What kind of records did he ask to see?

MR. O'DONNELL: Objection on the ground of relevance. Mr. DeAngelis has testified that he was a member of the Chicago Board of Trade, not a member of the New York Produce Exchange.

THE COURT: I will overrule the objection. You may ask him what records he supplied them.

elrf 2 DeAngelis-redirect 3055

Q What records did you show the representative of the Chicago Board of Trade, sir? I am speaking about category of records.

A I can't recall, except that it had to do with our trading, whether we reported all our trading. We had to report to the CEA every day. We disclosed all of our records of our trading each and every day and he may have asked for other information which we gave him, because he was satisfied, came back three or four times.

Q Do you recall supplying representatives of the Chicago Board of Trade with copies of some of your sales contracts?

A It is possible.

Q Mr. DeAngelis, I show you Plaintiff's Exhibit 45-A for identification and ask you if that refreshes your recollection that you supplied copies of some of Allied's sale contracts to the Chicago Board of Trading during 1963?

A Yes. This is information supplied to him per his request. It has Allied's future position, Allied's cash soybean oil position, Allied's inventory at that time in 1963, February, and what purchases were made for forward delivery.

elrf 3 DeAngelis-redirect 3056

Q There is also a copy of a contract?

A Attached is a copy of a contract between Allied and Bunge, between Allied and Bunge and Allied and Garnet Grain.

Q Did anyone from the Produce Exchange during 1963 request similar information from you, that you can recall?

A Not that I recall.

Q You told Mr. Liman in response to one of his questions that you never informed anyone at the Produce Exchange that you were engaging in ex-pit transactions to support the market, do you recall that, saying that before?

A I never made that statement to anyone. The statement of supporting the market, I made here --

Q Yes, I mean you told Mr. Liman that this morning, you told him you never told that to anybody at the Produce Exchange.

A That is correct.

Q Did anyone from the Produce Exchange ever ask you why you were engaging in ex-pits, during '63?

A I don't believe that question ever came up.

Mr. HARRIS: No further questions.

MR. MINNEROP: I have no questions.

Q But you personally didn't have a talk with him of the kind you had with Mr. Berg in '63 where you reassured Mr. Berg everything was legitimate?

A I don't believe I ever spoke with the gentleman.

Q With respect to the questions Mr. Harris asked you about ex-pits, do you know if the Produce Exchange asked Mr. Gittleman about the purpose of ex-pits?

A I can't say.

MR. O'DONNELL: Thank you, Mr. DeAngelis.

MR. HARRIS: I have just a couple.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q During 1963, Mr. DeAngelis, you told Mr. Liman you continued, Allied continued to trade on the Chicago Board of Trade.

Did Allied ever obtain 90 per cent of the soybean oil futures contracts as it did in cottonseed oil futures?

A To my knowledge, no.

Q Did it ever come close to 90 per cent?

A I don't believe so.

Q Do you recall, Mr. DeAngelis, that for a time in 1963 the Chicago Board of Trade required Allied

to submit weekly position reports to it?

A I believe that was done.

Q Do you recall what part of 1963 that was, sir?

A I can't say. It was done at a certain time.

Q I would like to show you Plaintiff's Exhibits 45-G, 45-I, 45-K, 45-M, 45-V, 45-Z, 45-X, 45-A, to see if that refreshes your recollection as to what period of time in 1963 you were supplying weekly reports to the Chicago Board of Trade?

A This was during the period January, February and March, 1963.

Q I would like to show you Plaintiff's Exhibit 45-BB for identification and ask you if that refreshes your recollection as to when you were told to stop supplying those reports to the Chicago Board of Trade?

A On March 27, 1963.

Q Do you recall whether your position in January, February and March of 1963 was a hedged position, Mr. DeAngelis?

A In January, February and March, yes.

MR. HARRIS: No further questions, -- one thing, your Honor. Just a technical matter.

Mr. O'Donnell referred to Plaintiff's Exhibits 127, and 133, and so did I in examining Mr.

the market to stabilize or go a little higher, perhaps.

Q When you used the term scale down, what did you mean by that?

A If the market let's say is 12 cents now, if you give a broker the order to buy five contracts every two points down, that means at 1,198 if it hits there, you buy five; 1,196 you buy five, et cetera.

Q Did you ever instruct any of the floor brokers to buy at the close?

A Occasionally.

Q What was the purpose of that kind of instruction?

A Well, perhaps some indications there would be an export business which was pending and we didn't want the market to go down, would be one reason to buy at the close.

Keep as high as possible at the close.

Another reason would be, there would be margin calls to be met every day and this method of buying at the close, you would sustain the market.

Q You referred earlier to instructing the floor brokers to give up contracts. Can you describe a little more fully how it would come about, say, in the fall of 1963 that Ira Haupt & Co. would obtain Allied

A Well, I would say roughly in the spring of 1963. Spring and summer.

Q Tell us what circumstances led Allied to seek registered warehouse receipt financing from Bunge and Continental?

MR. LIMAN: Objection to the form of the question, your Honor.

THE COURT: Overruled.

A I believe we started with Bunge Corporation first, where Mr. DeAngelis asked me one day to go over to the Bunge offices in New York and have a meeting with Messrs. Fornari and Forti concerning this possible ex-pit trading.

Q Do you know why Allied was seeking to have Bunge finance registered warehouse receipts?

MR. LIMAN: Objection again as to the form of the question.

THE COURT: That objection is sustained.

Q Do you recall when a meeting was held between representatives of Allied and Bunge to discuss this financing of warehouse receipts?

A During the spring of 1963.

Q Let me show you Plaintiff's Exhibit 93 for identification and see if that would refresh your recollection as to what month you met with the repre-

sentatives of Bunge?

A Yes; that does refresh my recollection. It would be late February of 1963.

Q Do you recall who attended the meeting on behalf of Allied?

A Mr. DeAngelis and myself.

Q Do you recall who attended the meeting on behalf of Bunge Corporation?

A Mr. Forti and Mr. Fornari.

Q Where was the meeting held?

A At the Bunge offices.

Q As best as you can recall, Mr. Gittleman, can you tell us in words or substance what the Allied representatives said to the Bunge representatives at this meeting and what the Bunge representatives said to the Allied representatives at the meeting?

MR. LIMAN: Your Honor, can we have an understanding that with respect to Bunge conversations, that is admissible only with respect to the Bunge defendants; that with respect to Continental conversations, it is admissible only with respect to the Continental defendants.

That way we don't have to keep standing up.

THE COURT: All right.

After several weeks I think the jury understands that.

All right.

A Well, please understand that this is many years ago and I have to -- I have some impressions of the meeting, not the exact wording, perhaps. I can relate those.

Q As best as you can recall, what happened at the meeting?

A Well, Mr. DeAngelis I know started the conversations going, explained to Bunge this ex-pit

financing that he would like to get.

He mentioned to Bunge, of course, the various reasons that we at Allied wanted to do this.

One is that we were getting -- we were taking deliveries at various commodity houses of registered warehouse receipts. This was also a period during a lull in the export activity and this would help us, let's say, sustain the market for one thing. I believe that was mentioned.

Secondly, that this would give some profits to Bunge in that there was a lull in the export activity.

Thirdly, there would be no risk for Bunge because they would be hedged by virtue of this ex-pit type transaction.

Q Can you recall anything else about the meeting?

A Well, we discussed -- that was the general outline that was made.

Mr. Forti and Fornari seemed to look upon it favorably and they said that they would discuss it with Mr. Klein and come back and give a decision within a few days.

Q Did you discuss at that meeting an outline of the sort of terms of the financing arrangement?

A Yes, yes. It was a little rough at that time, but it was mentioned that the futures would be related to the futures market for the ex-pit portion of the trade and that Bunge would be covered for all costs that would be incurred to them by virtue of holding these warehouse receipts, and that these costs would include storage, interest charges that they would make to Allied for holding it, any other costs that they would incur, plus a brokerage commission, plus they would receive $2 a ton or nine cents per hundred pounds.

Q How did the meeting end?

A Well, it ended on a favorable note.

As I said, they would speak to Mr. Klein and come back to us on it.

Q Do you recall Mr. Forti or Mr. Fornari asking you or Mr. DeAngelis any particular questions at the meeting?

A Well, I can't recall any particular. There were many questions involved. It was -- there was one thing I think was signficant, that it was stated -- there was a question as to what period of time would they be holding these warehouse receipts for us.

In other words, the receipts -- let's assume this is a certain month and the futures that they would

be selling would be a month or two away in the distance and it was -- they asked us if we would take these receipts back from them prior to the first delivery date on that futures month, and we said yes, that would be the very latest we would take them back.

Q At this first meeting did Mr. Fornari or Mr. Forti ask you any question about the number of warehouse receipts Allied was holding?

A No, not any overall number. It may have been just a number pertaining to this one transaction.

Q At this first meeting did anybody indicate or ask questions concerning for whose account Bunge would be holding the warehouse receipts?

A It was understood we would take them back before the delivery date, which I think is sort of self-explanatory. To me it was anyway.

Q Was there any discussion or any understanding reached as to what Bunge could do with the receipts during the period in which it was holding the receipts prior to the delivery date?

MR. FRYER: I object, your Honor.

THE COURT: The objection is sustained.

Q Did there come a time, Mr. Gittleman, when you were informed that Mr. Klein had approved this

financing plan?

A Yes.

Q When did you learn of that?

A Within a week after the meeting.

THE COURT: Mr. Harris, it has already been established yesterday or the day before that the arrangements had been approved.

I don't see why we have to go through this again.

Q Subsequently, Mr. Gittleman, did you engage in ex-pit registered warehouse receipt financing transactions with Bunge during 1963?

A Yes, we did.

Q Do you recall approximately how often or how many of these transactions were engaged in, you engaged in with Bunge?

A I would say between 10 and 20 transactions in total.

Q Was each transaction separately negotiated?

A Well, there was a formula that we established and this formula was adhered to for all of these transactions.

Q Do you recall what the formula was, sir?

A Take the basis of the ex-pit price, the

futures price, cover all the Bunge costs, plus their profit, and that establishes the cash price that they would pay for the warehouse receipts. It would range between a total of 25, 30 points, depending upon the length of time involved.

Q Would there be a separate calculation made with respect to each one of these transactions with Bunge?

A Yes, there would.

Q Who made the calculation?

A Well, either myself with Mr. Forti or Fornari or sometimes with Mr. Groeneveld.

Q Mr. Gittleman, I would like to show you Plaintiff's Exhibit 166 for identification and ask if you can identify that document?

A Yes. This document is one that Mr. Groeneveld prepared, an internal document of Bunge, giving all the figures involved in one of these transactions.

MR. FRYER: Excuse me. Is this 166?

MR. HARRIS: Yes.

Do you want me to show it to you?

MR. FRYER: Yes.

MR. LIMAN: Could I see it?

MR. FRYER: I may have the wrong document number.

MR. LIMAN: That is 165 according to the notice.

(Pause.)

Q I also show you Exhibit 165 for identification and ask you if you can identify that?

A Yes. That is the same 200 registered receipts referred to in Mr. Groeneveld's summary.

Q Can you describe what kind of document 165 is?

A It is a Bunge sales contract to Allied.

gr1 Gittleman-direct 3089

Q Can you identify 166 as a calculation of the price relating to 163, sir?

A Yes, definitely.

MR. HARRIS: I would like to offer these two documents against Klein and Bunge, your Honor.

MR. FRYER: I have no objection to 165, which I think is the contract between Bunge and Allied.

I do object to 166 because of the lack of foundation, your Honor.

THE COURT: 165 is received.

I gather that your objection is you want this verified by somebody from Bunge?

MR. FRYER: Yes, I do.

THE COURT: 166 will not be received at this time.

(Plaintiff's Exhibit 165 was received in evidence)

Q Mr. Gittleman, looking at Exhibit 166, can you identify the handwriting on that document?

THE COURT: It's not to be received at this time, Mr. Harris.

MR. HARRIS: Mr. Groeneveld is dead, your Honor. That is the particular problem. We can't call him to identify it.

MR. FRYER: I think, your Honor, just to save time, I would stipulate that I think it is Mr. Groeneveld's writing.

THE COURT: You have no objection to it then?

MR. FRYER: Your Honor, I think this is a document that ought to be explained by a Bunge person. I also am not sure as to what time Mr. Groeneveld did this.

THE COURT: All right. You can deal with the contract. 166 is deferred until it can be explained.

Q Mr. Gittleman, can you describe the paperwork that accompanied the ex-pit registered warehouse receipt financing transactions that Allied did with Bunge? What documents were there in connection with these transactions?

A Well, at the time one of these was agreed upon, Bunge would send the purchase contract to Allied, POM they called it. That's about all that I would be involved in, their purchase contract. Whatever other paper work tey did, I don't know.

Q Was this POM a Bunge form they prepared?

A Yes, it was a Bunge contract form.

Q Did the POM cover, as you recall, sir, the

warehouse receipt, the ex-pit or both parts of the transaction?

A I'm almost certain in every case that the POM would cover the purchase of the registered warehouse receipt and it would also show somewhere on it the relationship to the ex-pit that was done, giving the price of the ex-pit.

Q At the time when the delivery month came, as you earlier indicated, and the loan would be repaid, was there any documentation prepared in connection with that phase of the transaction?

A Bunge would make another contract out, called their SOM, which would complete the round trip of those warehouse receipts.

THE COURT: I'm not sure I understand that, Mr. Gittleman. Maybe you can explain to me how this transaction works so I won't be confused.

I assumed that the ex-pit transaction was merely a method by which you consummated the financial arrangement.

THE WITNESS: Initially, your Honor.

THE COURT: If Allied would have some oil which it was required to accept for delivery at a certain time and it did not have the money to secure that oil, it

would go to Bunge or Continental Grain and seek to make financial arrangements to get the money to pay X for the oil, postponing its acceptance?

THE WITNESS: Yes.

THE COURT: The arrangements would be drawn up, they would advance the money, the collateral or the security would be the registered warehouse receipts, which was evidence that the oil actually existed, and all of this transaction had to go out of the floor of the exchange and had to be consummated in private between Bunge and Allied or whoever, and it was, therefore, called an ex-pit transaction; is that correct?

THE WITNESS: Yes, that's correct. That's the first part of it, your Honor.

THE COURT: Tell me the second part. The problem I have, I'm getting confused that the ex-pit is something different from what the transaction was. So you tell me what is the second part of it.

THE WITNESS: The second part would be there Allied at a later date prior to the delivery date of that futures month which Bunge originally ex-pitted -- let's assume it was the month of September. As we are getting close to Septemb er and Allied didn't

want Bunge to do anything with the receipts, so Allied would then take them back from Bunge, actually, in effect, buying them back from Bunge paperwise.

THE COURT: Buying them back from Bunge paperwise. If they wanted to renew the loan, they would just roll over the transaction.

THE WITNESS: There would be two situations. One would be if they would take them back without rolling them over and giving it to someone else. There they would cancel out the futures part of it.

Let's say Bunge was short 500 September cottonseed oil on the futures market. They would then undo that by doing the reverse of what they originally did, so Bunge would have no futures short and Allied would have no futures long. If they rolled it over, then they would also do that by eliminating the futures side of it for that month, but putting on new futures.

THE COURT: All of these transactions had to take place ex-pit; is that correct?

THE WITNESS: Yes, ex-pit. It's actually reported to the floor of the exchange and it's announced on the floor of the exchange.

THE COURT: I think I understand that.

All I'm trying to get clear is that the

ex-pit is really the method pursuant to which the financial transaction was carried out.

THE WITNESS: Yes.

THE COURT: All right.

(Continued on next page)

elr1 Gittleman-direct 3095

Q Just to get back to the forms of the paper work for a second, on the first part of the transaction, Mr. Gittleman, which you described when Bunge advanced money against the warehouse receipts, is that when they produce the POM?

A The POM initially, yes.

Q And it was the second part of the transaction when Allied took back the receipt --

A Or rolled over.

Q Or when they used the SOM?

A SOM.

Q Is Exhibit 165 one of those SOM's?

A Yes.

Q When you did a rollover as you just described to Judge Carter, were there two ex-pits involved in that?

A Two ex-pits.

Q Will you just describe what mechanically transpired in those ex-pits, with the rollover situation?

A Well, either us or Bunge, usually Bunge, I believe, would give the information to the floor broker that there would be an ex-pit of so many contracts.

Q I'm sorry, I didn't mean what you told the

floor brokers.

Would you describe the ex-pits, how the ex-pits worked themselves? In other words, who went long and who went short?

A Initially Bunge is short a certain month when they first took the warehouse receipts, they are short a certain futures month, and Allied is short the same price. Then when there is a rollover made and Bunge then produces this SOM contract, that is done just the reverse, Bunge buys that same month and Allied sells at whatever the current market price is, so there may be a price differential, but the effect is whatever they are short they are no longer short and Allied is no longer long.

Q At that point you cancelled out your prior position?

A Yes.

Q Now go on.

A Then, in a new transaction Bunge makes a new POM and goes short further a future month and Allied is long that further future month at the same price.

Q This all takes place at one time, doesn't it?

A Sort of almost simultaneously.

Q On each of those ex-pit transactions you just described in connection with the rollover, was Allied required to pay brokerage commissions?

A Yes.

Q What commission did Allied pay, do you recall?

A Well, I believe in the case of Bunge Corporation, it was $20 a contract or three and a third points.

Q Would this be for Allied's part of the transaction?

A Well, Allied had to, through this accounting, pay this to Bunge Corporation.

Q Let's describe this accounting, Mr. Gittleman. Can you describe to us on one of these transactions how specifically the accounting would work --

MR. LIMAN: Objection, your Honor.

Q I will be specific.

MR. LIMAN: I am objecting on grounds of relevance. I thought that it was a stipulated fact here that the parties entered into these transactions for the purpose of profit. Is it really pertinent to go over the detail as to how this point was arrived at, or that point of the profit?

THE COURT: I agree. I think that if you

elr4 Gittleman-direct 3098

want to bring out how much the extent of the profit, etc., I think that would advance us. But there is no point in our going through the mere details in regard to it. The objection is sustained.

Q Mr. Gittleman, looking at Exhibit 165, take that transaction with Bunge represented by the SOM marked as Exhibit 165, can you tell us whether Allied paid Bunge's -- can you tell us what costs of Bunge Allied assumed in that transaction ?

THE COURT: I think he's already told you that.

MR. HARRIS: I didn't think that he had told us all of it, your Honor.

THE COURT: All right. Repeat what you told us.

A I gave sort of a general outline and I said how many the total points came to. If you want the breakdown, because this was Bunge's margin of profit or 9 points. There was 3-1/3 points commission we are speaking of, there was the storage charges which accrued at the rate of $1.80 a day, for which for let's say one month would be $54. Which would be 9 points. And theinterest charg that Bunge charged to Allied.

THE COURT: The interest on the loan?

THE WITNESS: The interest on the loan, yes, sir.

THE COURT: There was a brokerage commission?

THE WITNESS: Brokerage commission is separate, what they had to pay to the commission house, like Merrill Lynch just for doing the transaction.

Q That was paid for by Allied as well?

A Yes, Allied assumed that.

Q In this 9 points of margin of profit, is that equivalent to $2 a ton?

A Yes.

Q This brokerage commission that you referred to, I think you said in the case of Bunge it was $20, is that $20 for each contract involved in the ex-pit?

A For each single contract.

Q Do you recall which brokers acted for Allied in these ex-pit transactions with Bunge during the early part of 1963?

A I believe it would be primarily Peters, the majority of the time.

Q And in the latter part of 1963, which brokerage firms acted on behalf of Allied?

A Ira Haupt.

Q Do you recall which brokerage firms acted on

behalf of Bunge during 1963?

A Merrill Lynch, I believe.

Q Did there come a time, Mr. Gittleman, when Allied representatives met with representatives of Continental Grain to discuss the possibility of ex-pit financing with registered warehouse receipts between Allied and Continental?

A Well, it was somewhat later in the year. I never attended any meeting having to do with that, although Mr. DeAngelis asked me to at a certain point, to calltne people at Continental Grain and discuss with them, and he told me that he had met with them previously or talked to them prev iously.

Q Did you make a call to Continental Grain?

A Yes.

Q Who did you speak to?

A Either Mr. Totah or Mr. Stafford, I'm not sure which.

Q Do you remember approximately what month that was?

A Well, it was later than Bunge. Maybe March or April of '63.

Q As best you can recall, what transpired during the course of this telephone conversation?

A I spoke to either Mr. Stafford or Mr. Totah. One of them had already talked to Mr. DeAngelis about this ex-pit financing.

(Continued on next page)

MR. LIMAN: Can the witness, your Honor, be instructed to testify as best he recalls as to what he said to either Mr. Totah or Mr. Stafford, and what they said to him, as opposed to what Mr. DeAngelis may have told them.

THE COURT: All right. Do that.

THE WITNESS: Yes, sir. I called Mr. Stafford or Mr. Totah and they seemed to be somewhat familiar with this proposal that we had made to them and the purpose of my call was more or less to go over the mechanics of the proposed business to discuss the -- how the ex-pits would work, how they would be guaranteed no risk in it by virtue of the ex-pits and that they would be buying the cash warehouse receipts at this differential based on a formula which was similar to the one we established with Bunge Corporation.

That was about the extent of my phone call over all.

Q Do you recall what the party you were speaking to at Continental said to you in this connection during that phone call?

A It is not as clear, really as in the case of Bunge Corporation. It would be difficult for me to say.

Q How was the phone call left when you ended

the conversation?

A Well, also that Mr. Stafford and Mr. Totah told me that they would get back to us in a few days and see whether we would proceed on this operation.

Q Did someone get back to you from Continental a few days later?

A Yes, they did, and they had the approval and we went ahead with this.

Q Subsequently, did Allied engage in ex-pit financing registered warehouse receipt transactions with Continental Grain?

THE COURT: We know they did, Mr. Harris.

Q Did the paper work and the mechanics of the ex-pit financing registered warehouse receipt transactions which Allied engaged in with Continental Grain in 1963 differ from the paper work and mechanics of the ex-pit financing transactions that you have described Allied engaged in with Bunge in 1963?

A It was very similar.

Q Was the formula approximately the same?

A Approximately the same.

Q Continental used documents such as SOM's and POM's?

A They didn't have POM or SOM. They had their

own contract forms.

Q And they used those?

A Yes.

Q Were they similar in nature to the type of the contract Bunge used?

A Yes, Mr. Harris. In nature they were similar.

Q Did the registered warehouse receipts make round trips with Continental in the same way they did with Bunge?

MR. LIMAN: Objection to the form, your Honor.

THE COURT: Objection sustained.

Q Did Allied ever roll forward its obligations with Continental, as you described to the Court earlier it did with the Bunge transactions?

A Yes.

Q Referring to these registered warehouse receipt ex-pit financing transactions that were engaged in by Allied during 1963, sir, can you tell us whether Allied made money on these transactions?

MR. LIMAN: Objection to the form of that, your Honor, and to the substance.

THE COURT: The objection is sustained on the latter ground.

Q Can you describe to us the costs from Allied's

side in connection with these transactions?

MR. LIMAN: Objection, your Honor, on the same ground.

THE COURT: The objection is sustained.

Q In your view, Mr. Gittleman, during 1963 did these ex-pit financing of registered warehouse receipt transactions have any effect than cottonseed oil futures prices?

MR. LIMAN: Objection, your Honor. I have no objection to discussions with my client, but I don't think his opinion on this should be taken.

MR. FRYER: Objection.

THE COURT: Objection sustained.

Q Mr. Gittleman, do you recall whether it was the intention of yourself and Mr. DeAngelis and Allied Crude by entering into these ex-pit financing transactions involving registered warehouse receipts to effect cottonseed oil futures prices during 1963?

MR. LIMAN: Same objection.

THE COURT: Sustained.

Q Do you recall, Mr. Gittleman, in November 1963 approximately how many registered warehouse receipts for cottonseed oil that Mr. DeAngelis owned?

A In round figures, 3,000, more or less.

THE COURT: When was this?

THE WITNESS: In November of 1963, your Honor.

Q Did you also in 1963 engage in registered warehouse receipt financing transactions with Bunge Corporation and Continental Grain involving soybean oil?

A Yes.

Q Did those transactions involving soybean oil work the same way as the ones you have previously described?

MR. FRYER: I object, your Honor.

Q As with cottonseed oil.

THE COURT: He can answer that.

A Yes, exactly the same.

Q Did you have any conversation with representatives of Continental Grain during 1963, as you can recall, concerning their activities and Allied's activities in the futures market?

A There was sort of a -- it was no tremendous item, but there was a little thing between myself and Mr. Stafford primarily, whereby -- I mean, it was known in the market that we were buying, most of the time. And we were doing odd types of buying.

In other words, when somebody is buying legitimately, they buy on a scale down, but sometimes we

would, like before we would buy at the close, at the market, just to sustain the market. And we had heard through various floor brokers from time to time that Continental Grain would be selling at those times. I brought this to the attention of Mr. DeAngelis on several occasions, and I believe at a certain point I went over to the Continental offices and discussed this with those people, and I don't know what the result was.

Q Do you recall when that was?

A Sometime in 1963.

Q Let me show you Plaintiff's Exhibit 65 for identification and ask if that refreshes your recollection as to the approximate time during 1963 when you met with the Continental people on this subject?

(Pause.)

MR. LIMAN: May I have the question of who he met with?

MR. HARRIS: That is going to be my next question. I'm just trying to get the date first, your Honor.

(Pause.)

A Yes, I understand.

Q The question is, does that refresh your recollection as to approximately what date you met?

A Yes, in June of 1963.

Q And do you recall who you met with?

A With Mr. Stafford and Mr. Totah.

Q Did you know their positions with Continental Grain at that time?

A No.

Q Can you tell us as best --

MR. LIMAN: Mr. Harris, I think when you use the word "positions," the witness may have been thinking of futures position.

Do you want to know whether he knew titles or their positions?

Q I want to know their job titles.

A I'm sorry. I thought you meant the futures position. Yes. Mr. Totah was vice-president of Continental Grain and in charge of the fats and oils department. Mr. Stafford worked directly under him.

Q Can you recall the substance of the conversation which took place between yourself and Mr. Totah and Mr. Stafford on that occasion?

A As I related where I had accused them of taking advantage of our position, that we had been doing a lot of business together and I didn't think it was quite ethical to do so, and I believe that they

Q Do you recall whether you had any subsequent discussions in 1963 with Mr. Totah and Mr. Stafford on this subject subsequent to June?

A Not that I can recall.

Q Going back for one second to the round trip, the POM and then the SOM, Mr. Gittleman.

Do you recall when the SOM was in the second stage there was a price adjustment to balance out the difference between the futures prices and the cash prices that had taken place on the first part of the transaction?

MR. FRYER: Your Honor, I object. It is leading and I think it is improper as to form.

THE COURT: It is leading, but I think it has already been answered.

Q During 1963, Mr. Gittleman, did anyone from the Produce Exchange ever come to Bayonne, to your knowledge, to look at your futures position or any of the books and records of Allied?

A Not that I ever knew.

Q During 1963 did any official of the Produce Exchange ask you to reduce your futures position?

A No.

Q Did you ever tell anyone during 1963 that

you would reduce your futures position?

A No.

Q Did anyone from the Produce Exchange during 1963 question any of the ex-pit transactions in which Allied was engaging during that year?

A Not that I recall.

MR. HARRIS: May I have one second, your Honor?

(Pause.)

MR. HARRIS: I have no further questions.

CROSS EXAMINATION

BY MR. LIMAN:

Q Mr. Gittleman, have you ever met Harold Vogel?

A No, I never did.

Q Is it a fact that you never had any business dealings with Harold Vogel?

A No.

Q Is it a fact that at the time you dealt with Continental Grain, Mr. Totah was in charge of the Fats and Oils Department?

A That is correct.

Q Is it also a fact that when you first began doing business with Continental, the Fats and Oils Department was operated in a separate corporation which

sales contract says, does it not, "Net cash by cashier's check against surrender of warehouse receipts"?

A Yes.

Q And that contract was a sales contract which was proper under the rules of the Produce Exchange, was it not, for an ex-pit transaction?

A I thought it was.

Q An exchange of warehouse receipts for futures contracts?

A I always assumed it was correct.

Q Did you also know that with respect to such contracts that the Exchange required documentation from the brokerage firms involved with respect to the ex-pit transaction that it was a transaction in compliance with the rules?

A I never saw that side of it, but I'm sure they did that.

Q Is it not a fact, Mr. Gittleman, that from time to time you supplied to one or more brokerage firms letters with respect to these ex-pit transactions? Let me show you one. This is a part of Defendant's Exhibit 161 for identification.

I will ask you first whether you recognize this letter from Allied dated October 2, 1963 to Ira

Haupt & Co. as one that you sent to Ira Haupt?

A Yes.

Q That is your signature, is it not, sir?

A Correct.

Q You state here that Allied confirms selling to Bunge today 520 New York Produce Exchange warehouse receipts at such and such a price --

MR. HARRIS: Your Honor, the document is not in evidence. I don't think Mr. MacDonald should read from it.

Q With respect to that document, can you tell us if I am not right that you were supplying that to Ira Haupt so that Ira Haupt, in turn, could inform the Produce Exchange as to the nature of the transaction?

A That was the purpose of the letter, yes.

Q All right.

You did that on various occasions, did you not, Mr. Gittleman?

A Yes, sir.

Q So far as that Exhibit 165 is concerned or any of these letters by you are concerned, those ex-pit transactions as they are represented on their face did not tell anybody about financing arrangements between Allied and either Bunge or Continental Grain, did they?

A No, they didn't.

Q So far as Mr. Berg or anybody at the New York Produce Exchange is concerned, you did not during 1963 report in any way to any representative of the New York Produce Exchange, did you, that there was anything unusual about the ex-pit transactions that Allied was engaging in?

A No, absolutely not.

Q Am I right that you did not regard in the fall of 1963 the transactions that Allied was engaging in with Bunge and Continental as unusual in any respect from the point of the New York Produce Exchange?

A From the standpoint ofthe New York Produce Exchange, no. They were very large in quantity and numerous compared to whatever had gone on before. I always thought they were perfectly legal.

Q With respect to that financing, you had no reason to believe in the fall of 1963, in the sense of expressing any such belief to anybody at the produce exchange, that Allied was in such financial condition that it couldn't meet its obligations, did you? Didn't you expect it to meet its obligations throughout the fall of 1963?

A I expected them to meet their obligations, yes.

Q If I understood your testimony correctly with respect to these ex-pit transactions, you thought of them throughout the fall of 1963, so far as Allied was concerned, as legitimate on both the New York Produce Exchange and the Chicago Board of Trade?

A Yes.

Q Did there come a time in the fall of 1963, Mr. Gittleman, when Haupt informed you that the produce exchange had requested Allied or Haupt to furnish underlying documentation with respect to some ex-pit transactions in the form of those letters that I showed you a minute ago, letters from you?

A I'm not sure of the question.

Q Didn't Haupt tell you at some point in the fall of 1963 that they wanted some letters from you wish respect to some of these ex -pit transactions so that they might pass them along to the New York Produce Exchange and Mr. Berg?

A They requested them. Ira Haupt requested them. Exactly when, I don't recall.

Q They requested them, and you knew that when they requested them, it was to send along to the New York Produce Exchange?

A Yes.

(Pause)

REDIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. Gittleman, in response to one of Mr. O'Donnell's questions you indicated that you did not attempt to manipulate the market during 1963.

Did you attempt to affect in any way the price of cottonseed oil futures contracts during 1963?

A We definitely tried to maintain the market so that it wouldn't be depressed by virtue of holding all these registtered warehouse receipts. That alone would have that tendency to maintain the market.

Q Did you attempt to maintain the market during 1963 in any other way?

A Well, by purchases of futures contracts.

Q In response to one of Mr. O'Donnell's questions you indicated that rumors about Russian purchasing would occur in the market even into November of 1963?

A Yes.

Q Did people who believed in the rumors of the Russian buying in 1963 expect the market to go up or down?

A Well, naturally they expected it to go up.

er3 Gittleman-recross-redirect 3170

vice versa, it is normal for the buyer to hope the market is going up and for the seller to hope the market is going down?

A Yes.

MR. O'DONNELL: That is all. Thank you.

MR. HARRIS: I have one final question.

THE COURT: One question.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q Did Mr. Newman tell you who the higher authority was who he was going to check with on those occasions?

A No. Maybe at one time he may have said Mr. Stevens, but nothing beyond that.

THE COURT: Thank you, Mr. Gittleman. You may step down.

Call your next witness.

(Witness excused)

MR. HARRIS: Mr. Anderson.

H A R R Y B. A N D E R S O N, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. Anderson, how are you presently employed?

A I am a senior vice-president of Merrill Lynch, Pierce, Fenner & Smith, Inc.

Q In 1963 how were you employed, sir?

A I was also employed at Merrill Lynch in charge of their Commodity Division.

Q For how long had you been in charge of Merrill Lynch's Commodity Division in 1963?

A Since 1954.

Q Were you on the Board of Directors of Merrill Lynch in 1963?

A Yes, sir.

Q Weren't you on the Executive Committee of Merrill Lynch during 1963?

A I don't recall whether Merrill Lynch had an Executive Committee in 1963. If so, I was on it.

Q Let me show you Plaintiff's Exhibit 215 for identification, which are minutes of the organization

meeting of the Board April 9, 1963 --

THE COURT: Frankly, I wish you gentlemen would stipulate about issues that we don't have to waste time in establishing, when you know whether they are facts or not.

MR. MINNEROP: Your Honor, I wasn't asked to stipulate. I would be glad to do so if I had been asked.

MR. HARRIS: I don't think that is fair, your Honor, but in any event there is no stipulation of facts.

THE COURT: Was he on the Board on the Executive Committee?

MR. MINNEROP: Not to my knowledge, your Honor.

Q Does this refresh your recollection, Mr. Anderson, that you were on the Executive Committee during 1963?

A Yes, sir, I was.

MR. LIMAN: That was of Merrill Lynch now.

MR. HARRIS: Of Merrill Lynch. I thought that was clear.

Q Mr. Anderson, were you a member of the New York Produce Exchange during 1963?

A Yes, sir.

Q For how long had you been a member of the Produce Exchange at that time?

A I don't recall exactly. I joined sometime in the lat '50s, I think.

Q Were you on the Board of Managers in 1963 of the Produce Exchange?

A Of the Produce Exchange, yes, sir.

Q And you were also on the Executive Committee, were you not?

A Yes, sir.

Q And you were also chairman of the Business Conduct Committee during 1963, were you not?

A Yes, sir.

Q And you were also chairman of the Cottonseed Products and Soybean Oil Committee, is that correct?

A I think it was called the Cottonseed Products Committee, but I was chairman.

Q Do you recall, Mr. Anderson, in 1963 that you also held the title of acting president of the New York Produce Exchange?

A I don't remember that.

Q Let me show you Plaintiff's Exhibit --

MR. MINNEROP: Your Honor, we would be happy to stipulate that he was acting president.

THE COURT: All right. Thank you.

Q Isn't it a fact, Mr. Anderson, that you served on the Board of the New York Produce Exchange from 1957 through 1963 and into 1964?

A I don't remember exactly when I went on the Board. It was in the '50s and I continued on the Board until 1964.

Q Do you recall, Mr. Anderson, that you were the person who registered Merrill Lynch as an associate member of the New York Produce Exchange?

A Well, I didn't originally. When the Merrill Lynch seat passed to me, then it was registered in Merrill Lynch's name.

Q Isn't it a fact that Merrill Lynch paid your dues which you were required to pay as a member of the New York Produce Exchange in '63?

A Yes.

Q What were your general duties, sir, as head of the Commodities Department of Merrill Lynch during 1963?

A The Commodities Division of Merrill Lynch was a service division. It was responsible for providing commodities research, information and advice to our clients; and then we had specialists in the various

commodities who specialized in those particular commodities assigned to them and the general research division.

Q Did Merrill Lynch have any trading for its house account in cottonseed oil futures during 1963?

A Merrill Lynch didn't have a commodity house account.

Q So all the trading was done for customers?

A Exactly.

Q Do you recall whether in 1963 Bunge was a customer of Merrill Lynch in commodities?

A Yes, they were.

Q Was Continental Grain a customer of Merrill Lynch in commodities during 1963?

A Yes, they were.

Q Isn't it a fact that Bunge was at times one of the most active and one of the largest of Merrill Lynch's commodities customers or accounts?

A They were a large account. I wouldn't want to say they were -- characterize them as one of the largest or one of the most active.

MR. MINNEROP: Your Honor, if it would help matters, we would be happy to stipulate that Bunge was an active and very valued customer of Merrill Lynch's at that time.

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MR. HARRIS: I will accept that, your Honor.

MR. MINNEROP: And so was Continental, and many others.

MR. O'DONNELL: Not the New York Produce Exchange.

Q Do you recall during 1963 that there came a time when the majority of the contracts, cottonseed oil futures contracts held by Merrill Lynch for its customers were short contracts rather than long contracts?

A I don't know when that event occurred or whether it occurred in '63 or earlier. By November of '63 we were net short.

Q Let me show you Plaintiff's Exhibit 133 for identification and see if that can refresh your recollection that --

A We appeared to have been net short all year. Whether we were net short the previous year, I don't know. Except for one month when we were long 426 and short 419, we were net short the rest of the year.

Q Do you recall that the net short position increased significantly starting in July, 1963?

A Yes.

Q As compared to the first half of the year?

A Yes, that is the usual situation in a hedging

market.

Q Why is that, sir?

A Because the crop was moving. And as the crushers and others acquired product, they began hedging.

Q Were most of your customers at that time hedge customers, sir?

A I would think so, yes.

Q Did Merrill Lynch obtain hedge letters from its hedged customers in 1963?

A Yes, sir.

Q I would like to show you Plaintiff's Exhibit 241-A, B and C and ask if you can identify those documents?

A Well, the first letter is from Mr. Kebel of our Credit Department to Mr. Handy of our Commodity Margin Department, saying that we have a hedge letter in file covering transactions in cottonseed oil, soybean oil and soybean meal from theContinental Grain Company.

The next exhibit, 2416 is a letter signed by Mr. Paul Landau, assistant vice-president of Continental Grain Company, which is a hedge letter covering soybean meal.

These others appear to be wires that were exchanged --

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AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

H A R R Y B. A N D E R S O N, resumed the stand and testified further as follows:

MR. HARRIS: Your Honor, during the luncheon break the attorneys for Merrill Lynch and I worked out a stipulation with regard to Mr. Atkins.

We have stipulated that Mr. Atkins in 1963 was a senior account executive for Merrill Lynch at 575 Madison Avenue who handled securities and commodities accounts, including cottonseed oil and soybean oil futures contracts.

MR. MANNING: For customers.

MR. HARRIS: For customers.

I would like at this time to offer, your Honor, Plaintiff's Exhibits 203, 204 and 245 for identification against Merrill Lynch and Harry Anderson.

MR. MINNEROP: We have no objection, your Honor.

(Plaintiff's Exhibits 203, 204 and 245 for identification, received in evidence.)

MR. HARRIS: While the reporter is marking

those, your Honor, perhaps since Mr. Liman requested it before lunch, I should read Plaintiff's Exhibits 241-A and 241-B in evidence to the jury.

(Mr. Harris read from Plaintiff's Exhibit 241-A in evidence to the jury.)

(Mr. Harris read from Plaintiff's Exhibit 241-B in evidence to the jury.)

DIRECT EXAMINATION

BY MR. HARRIS (Continued):

Q Based on the memorandum, Exhibit 241-A, Mr. Anderson, can you tell us whether there was similar letters received from Continental Grain with respect to cottonseed oil and soybean oil?

A Apparently there were, yes.

Q Thank you.

Mr. Anderson, do you recall the volume of trading of cottonseed oil futures contracts increasing during the summer of 1963?

A I believe it did, yes, sir.

Q You were aware of it at that time; were you not?

A Yes, I was aware that all commodities were increasing in volume.

Q I'm specifically talking about cottonseed

oil futures.

Were you aware that the trading in cottonseed oil futures were increasing in the summer of 1963?

A Yes.

Q Were you also aware that the open interest on the New York Produce Exchange was increasing during the summer of 1963?

A Yes.

Q Were you aware that there was an increase in the concentration of positions on the New York Produce Exchange during 1963?

A At what point in 1963?

Q During the summer of 1963.

A No, sir.

Q Did you become aware of it subsequently in 1963 that the concentration was increasing?

A In November.

Q During the summer of 1963 did you hear that Allied Crude Vegetable Oil was doing a lot of trading on the New York Produce Exchange?

A Yes, sir.

Q Isn't it correct, Mr. Anderson, that you knew that Allied Crude was building up a position --

A I don't understand your question.

Q I haven't finished the question.

Isn't it correct that you knew that Allied Crude was building up its position in cottonseed oil futures during the summer of 1963?

A I had heard various rumors that Allied Crude were large buyers of cottonseed oil futures, yes.

Q Where had you heard these rumors, sir?

A Well, we had a Fats and Oils Department who were responsible for keeping up with what was going on in the fats and oils markets, and I suppose I got my information from the people in that department and in our Commodity Research Department.

Q You are speaking now of people at Merrill Lynch, not the New York Produce Exchange?

A Yes.

Q You also knew that ex-pit trading was increasing during the summer of 1963; don't that correct?

A Yes, sir.

Q Did you hear that Allied was heavily involved in ex-pit trading during that time?

MR. MINNEROP: Objection to the form of the question, your Honor, heavily. What does it mean?

MR. HARRIS: I will rephrase it, your Honor.

Q Did you hear in 1963, during the summer of

1963, that Allied was heavily involved in the ex-pit trading that was going on on the New York Produce Exchange?

A In the fall of 1963 there were reports that Allied was engaging in ex-pit trade as well as other cash houses.

Q Isn't it correct that the large number of ex-pits that were traded during the period, say, July to October 1963 was unusual in your view?

MR. O'DONNELL: I object to the form of the question, your Honor, because of the use of the word "traded" on the exchange with respect to ex-pits.

THE COURT: It seems to me that this is another area in which it's been established, and I gather there's no dispute, that the ex-pit transactions were greater that year than they had been previously.

Why we have to establish it again and again I fail to understand.

MR. HARRIS: I'm trying to establish that Mr. Anderson felt that it was unusual.

THE COURT: Ask him, I suppose.

Q Did you feel that the volume of ex-pit trading going on in the period July to October 1963 was unusual?

A I felt that it was larger than it had been before, but I was not surprised that it was larger. I expected it to be larger.

Q Why did you expect the ex-pit trading to be larger, sir?

A Because there had been a substantial increase

in the licensed warehouse space available for deliveries on the New York Produce Exchange.

Q You were aware of that during 1963 as well; isn't that correct?

A Yes, sir.

Q In fact, isn't it correct that you expected this large amount of increased warehouse space to have depressed prices on the New York Produce Exchange; isn't that right?

A I didn't expect, I feared that it would.

Q And it never happened, did it?

A No, sir.

Q. Were you concerned about the increased warehouse space that was occurring in 1963, Mr. Anderson?

MR. MINNEROP: Your Honor, could we have Mr. Harris specify when in 1963 he's talking about? It's a rather broad time frame. I think it would facilitate things if we would know when in 1963.

THE COURT: I don't understand. Mr. Anderson has just said that he feared that the increased warehouse's availability would have the effect of depressing the market. Then you come and ask him was he concerned about it. I don't understand.

MR. HARRIS: I'm asking whether he's concerned about the increased warehouse space --

THE COURT: Ask him that.

MR. HARRIS: That's what I said. I thought that is what I said.

I will rephrase it.

Q During 1963 were you concerned about the increase in warehouse space?

A Because I feared it might depress the market, yes.

Q In fact, didn't you suggest, Mr. Anderson, at the October 3 board of managers meeting that in view of the large amount of oil being shipped and stored in New York in excess of needs, that perhaps there would have to be consideration of revision to the cottonseed futures contract?

A We actually held a meeting of the trade to determine whether the oil trade wished to revise the contract. I don't know exactly when that took place. But, in any event, they couldn't reach any agreement on it, so nothing came of it. There were those that wanted to change it and those that didn't. They were about evenly divided.

Q Where did you fall in that?

A I felt that the contract should be changed.

(Continued on next page)

Q And in what respect did you feel it should be changed, sir?

A This gets a little technical, but the price at which you deliver oil on the New York Produce Exchange was based on the freight rate for oil from a point in Texas, as I recall it was Lubbock, Texas, to New York.

Now, sometime in hte early '60s someone in California got the idea of chartering the Petri wine steamer and filling it with oil and shipping it around through the Panama Canal to New York and delivering the oil on the New York Produce Exchange.

The difference in the freight ratewas so great that there was a profit in doing this regardless of any other factor. It just was profitable on freight rates.

And of course, the same thing might have been true insofar as somebody shipping from Texas, from, say, Houston. I don't know whether there was ever enough of it shipped that way to really have any effect, but it was the fear that it might some day be used, and therefore ruin the market.

Q Was this oil coming around by water that you just described the source of the excess licensed

warehouse capacity that you were referring to in 1963?

A I'm not sure that I understand that question.

Q Let me ask it a different way: Do you remember what was responsible for the increased warehouse, increase in licensed warehouse space in 1963?

A There were an increasing number of applicants in the New York area and for that matter in other areas to get land space for delivery of contracts on the produce exchange.

Q What I am asking you is, is that because of this oil that was being shipped in by water?

MR. MINNEROP: If you know.

A I really can't say. I mean, I would assume it might have something to do with it, but I really don't know.

Q Didn't the applications for registered warehouse space come before the cottonseed products committee of which you were chairman in 1963?

A Yes, they did.

Q During 1963 weren't there discussions in the cottonseed products committee as to why people were applying to have increased warehouse space?

A Not exactly in that context. There were

almost constant discussions about certain people wanting to eliminate the amount of warehouse space, and it was my opinion and the opinion of the exchange's attorney that you couldn't discriminate against warehousemen simply because somebody thought there was enough warehouse space available in New York, and that the only remedy would be to change the contract, and the trade couldn't agree on that.

Q Do you recall, Mr. Anderson, that in 1963, and I am particularly referring to the fall of 1963, the produce exchange called in all outstanding registered warehouse receipts and had them revalidated?

A Yes, sir, I do recall that.

Q Do you recall why this was done?

A Well, the warehousemen were complaining to the exchange because they said that the oil was sitting in their warehouses and it would change hands on the exchange and they were not collecting their storage fees. So we hit upon the notion that if we required them to revalidate it, the warehousemen obviously would not approve a warehouse seat for which he hasn't been paid.

So this was one way to see to it that the the warehousemen got the fees they were entitled to.

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MR. HARRIS: I'm sorry. Forgive me.

MR. MINNEROP: Thank you, your Honor.

Q Mr. Anderson, let me start again.

Isn't it a fact that the increasing volume of ex-pit trading which was taking place in the summer and fall of 1963 was at least in part responsible for the fact that there were so many outstanding warehouse receipts that the warehousemen felt the need to ask for them to be revalidated?

A I'm afraid the question just doesn't quite come across to me, Mr. Harris. I don't understand it.

Q Isn't it a fact that the warehousemen were upset because the warehouse receipts had moved around between different parties so that they lost track of who was holding them?

A Yes, that's right.

Q What I am trying to ascertain from you is whether or not that was at least in part caused by the ex-pit trading that was going on in 1963?

A I don't know.

Q You did know that Bunge, one of Merrill Lynch's customers, was involved in a lot of the ex-pit trading that was taking place in 1963, did you not?

A I knew that Bunge had done some ex-pit trades through Merrill Lynch.

Q Did you know or did you believe in 1963 that Allied was on the other side of some of those ex-pit trades?

A Normally speaking, I didn't see the ex-pit trades. There were two such trades in which I was asked questions by the Exchange and I went to Mr. Forti who was then in charge of the oil area at Bunge, and asked him to elucidate for the Exchange what was involved in these trades and he did so, and I wrote a letter to -- I wrote a memorandum on what he said at the time he said it and then wrote a letter to Mr. Berg explaining to the Exchange what our client had explained to us.

The party on the other side of those ex-pits was Peters, not Allied.

Q I don't believe you answered my question,

Mr. Anderson. Did you not know or believe during 1963 that Allied was involved on the other side of some of the ex-pit trades?

MR. MINNEROP: Objection to the form of the question. It is actually two questions, did he know or did he believe. The answer may be the same, I don't know.

THE COURT: The objection is sustained. Ask him one at a time.

Q Did you believe during 1963 that Allied was on the opposite side of some of the ex-pit transactions in which Merrill Lynch was involved as broker?

A I believed that Ira Haupt as one of the principal operators in cotton oil in the New York area was probably involved in ex-pit trading.

MR. MINNEROP: Ira Haupt?

THE WITNESS: Did I say Allied --

Q I am asking you about Allied. You said Ira Haupt.

A I meant to say Allied, excuse me.

Q In fact, Mr. Anderson, don't you recall that there was a lot of talk circulating that Allied was involved in ex-pits during 1963 in connection with borrowint money against warehouse receipts?

A There was a great deal of talk going on in 1963 with Allied. Now, what I remember in that connection is that it was stated that Allied was moving its long position forward. I don't know whether you call that financing or not.

Q You don't recall talk about Allied, specifically about financing?

A Well, if you mean it in that Allied being long, say, the December contract and not wishing to take delivery of December oil would sell its long position to a short, and then through a ex-pit transaction do the same hedge back into March, so that the delivery of the oil is delayed from December until March, if you call that financing, I did hear about that; if that is what you have reference to. I don't know as I would call it financing. I would call it move the position back.

Q Let me refresh your recollection, Mr. Anderson, from some testimony you gave in December 20, 1965, at page 234:

"Q Did you, during that period of time" -- we are talking about 1963 now --"have any awareness that these ex-pits transactions were tied up somehow in some way with Allied and its financing activities? That is, getting itself financed?

"A Well, there was a lot of talk around.

"Q What was it?

"A To the effect that Allied was getting financed and they were selling this oil and getting financing in that way."

MR. MINNEROP: Your Honor, I don't see anything inconsistent in that answer as regards Mr. Anderson's testimony.

THE COURT: I will let him answer that.

Q Do you recall being asked those questions and giving those answers, Mr. Anderson?

A This refreshes my memory.

Q I assume your memory was better about the events of 1963 in December of '65 than it would be today; isn't that right?

A It certainly was.

Q I think you were saying that you knew that Allied was pledging warehouse receipts in connection with this financing?

A I didn't know it. I heard it.

Q Did you also hear that these transactions took place in connection with Allied accepting deliveries of these registered warehouse receipts against its long position?

A Which transaction, sir?

Q These financing transactions of warehouse receipts.

A The reports were that he was financing his warehouse receipts. Whether he got those warehouse receipts through delivery on the Exchange or got them somewhere else, I had no knowledge.

Q Do you recall whether deliveries were higher in 1963 than they had been earlier?

A Somewhat, yes.

Q Were you involved in the mechanics of the Exchange revalidating the warehouse receipts in the fall of 1963?

A No, sir.

Q Did you ever hear any report from anyone at the Exchange as to who owned the warehouse receipts that were brought in and were revalidated?

A No, sir.

Q From time to time during 1963, Mr. Anderson, did you receive reports through the Merrill Lynch organization from the floor brokers acting on behalf of Merrill Lynch as to the trading going on on the New York Produce Exchange?

A Well, I seldom spoke to the floor brokers

directly. They would speak to, in the case of Produce Exchange brokers, they would speak to our Research Department or to the head of our Fats and Oils Department in Chicago. And so indirectly I heard from them.

Q Who was the head of the Research Department in 1963?

A Mr. Hankin.

Q Who was the head of the Fats and Oils Department in Chicago?

A Mr. McHale.

Q Would these gentlemen, Mr. Hankin and Mr. McHale, report to you from time to time?

A Yes, sir.

Q Do you recall, Mr. Anderson, that the prices rose steadily on the Produce Exchange in cottonseed oil futures from September to early November 1963?

A No. I have the general impression that there was a moderate price rise through the fall. It was quite small, really.

Q Do you recall that Merrill Lynch concluded that cottonseed oil prices were too high in August of 1963?

A They were of the opinion that prices were high in August, but subsequently they changed their minds.

Q When did that take place?

A Well, when all the rumors about Russian purchases which were inaugurated by the purchase of wheat by the Russians in Canada. It was felt by a lot of people that they were also going to bxy oil and oil seeds.

Q Mr. Anderson, didn't there come a time in October 1963 when you became personally concerned con-cerned about the condition of th- cottonseed oil futures market?

A Well, there came a time in October 1963 when Mr. McHale told me that he didn't believe there was any Russian buying or would be any Russian buying, and so that caused me some concern.

Q Was that the first time in 1963 that you were concerned with the state of the cottonseed oil or the condition of the cottonseed oil futures market?

A I don't think I was concerned about the condition of the cottonseed oil futures market, but I had some concern earlier in the year about various rumors and reports that were circulating about Allied.

Q Can you pin down as best you can what part of the year?

A I was on vacation throughout most of August and when I came back from my vacation the markets everywhere were quite busy and I was quite busy, but it did come to my attention that there was a lot of stories going around about DeAngelis being a large buyer of oil, both soybean oil and cottonseed oil.

Q At that time did you also learn that Mr. Weinstein, president of the Clearing Association, had expressed concern as to concentration in the market?

A No, sir.

Q I would like to show you Plaintiff's Exhibit 27 and 28, which are two letters from Mr. Weinstein to Mr. MacDonald, and ask you if you have seen those letters prior to November 20, 1963?

A No, sir.

CIA -- CEA was aware of this.

We have been reading more about the CIA lately, your Honor. I'm sorry.

He said yes, they were very much aware of it.

I said, "I hope you are keeping an eye on it."

He said, "Don't worry, we are watching it very closely, on a day to day basis, and so far as we can see everything is all right."

I don't present these in sequence because the sequences is long ago.

At some point I had lunch with Mr. Bill McGregor from the Morgan Guaranty Bank, who is an old friend of mine and who was supposed to be the number one commodity banker in New York in those days, and I asked him if he understand the DeAngelis operation.

He said, "Not really, because our bank is not lending directly to DeAngelis."

But he said that, "One of our clients is financing DeAngelis and they have very good collateral in the form of warehouse receipts, American Express warehouse receipts."

I gathered from him that he felt that DeAngelis was all right.

Subsequently, in a casual meeting with Mr. Love of Anderson, Clayton & Company I asked him if he had heard anything about Mr. DeAngelis' operations, and he said that their company really was not in the export area but that their experience with DeAngelis had been satisfactory, from which I took it to mean that they had sold him some oil and he paid for it.

Then Mr. Forti of Bunge was on the Cottonseed Products Committee with me, and I asked him one day if he thought it was possible that Tino was getting on thin ice, and he said, "Well, you hear so many stories about Tino and almost all of them are untrue, and I see no reason to believe that he is in any difficulty. He is very shrewd and I think he knows what he is doing."

Then we had a Spanish customer who asked us to secure a credit rating for Mr. DeAngelis, and I passed that along to our Credit Department.

They first went to City Bank who said they were not lending to DeAngelis, but subsequently they got a favorable report from one of the other banks.

All of these things happened in the period between the time I got back from my vacation until the Russian buying commenced, and then I thought I understood what Mr. DeAngelis was doing. I thought he was buying

might have some information, just as the other people that I talked to.

Q Did you ask Mr. Forti any particular questions about any particular transactions with Allied Crude?

A No, sir.

Q Isn't it correct, Mr. Anderson, that by the end of October 1963 you had become concerned that Allied and Mr. DeAngelis was getting overextended?

A Well, I began to doubt the -- based on what Mr. McHale was telling me, and I think it was around the first of November -- he began to tell me that he had some doubts about whether the Russians were going to buy any oil. This was based on some weather studies.

So I asked him to go into this deeper.

Somewhere around the 10th of November he told me that his studies indicated to him that the damage to the Russian crop was in the grain area and that, therefore, he felt very sure that the Russians didn't need any oil.

So I said, "Well, what about the satellites or can you think of anywhere else where anybody might need some oil"?

He said, "No, not really."

I said, "Well, how do you explain the Allied operation that we heard so many rumors about?"

He said, "I can't explain it."

And so I said to him, "Well, Jim, I want you to go back and make the best estimate you can of what Allied's position is in the futures market. I realize it could only be an estimate, but I want your informed guess as to what that position might be.

And so he called me back on November the 13th, late in the afternoon -- I think it was November the 13th. He called me back after the close of the market and he told me that to the best of his estimate Allied held 50 per cent of the long open interest in both the Chicago soybean oil and the New York Produce cottonseed oil contracts combined. If you put them all together, he held 50 per cent.

MR. MINNEROP: May I suggest we put up the calendar if we get into this area of November 13 to November 20.

(Pause)

A I also asked for a credit check from my credit department on Allied Vegetable Oil Company at about that same time, shortly before McHale called me.

Q I want to come back to November 13. Mr. Anderson, I am going to back up and just follow up on what you said.

Do you recall whether the open interest on the Chicago Board of Trade was larger or smaller than the open interest on the NEw York Produce Exchange?

A You mean on soybean oil?

Q Yes, sir.

A Soybean oil was the bigger contract, yes, sir.

Q So the open interest was bigger?

A Yes.

Q In the Chicago --

A Exactly.

Q And it's fair to say that the news you received from Mr. McHale alarmed you?

A Yes, it did.

Q Let me just back up for a second before we pick up with November 13. Isn't it correct that you knew in the fall of 1963,and by that I mean September and October, that Mr. DeAngelis had previously gone bankrupt with a company called Gobel which he was heading, in the 1950s?

A Yes, I knew that.

Q Did you know that part of the reason that Gobel went bankrupt was becasue it could not meet margin calls in its commodities transactions?

A I really don't know anything about the Gobel bankruptcy. It happened before my day. When I went to the division we were simply trying to get our money back.

Q But you knew that Merrill Lynch wouldn't

do business with DeAngelis?

A Merrill Lynch would not do business with anybody who went bankrupt and left us holding the bag.

Q That included DeAngelis, did it not?

A Yes.

Q Isn't it correct that you also knew that certain banks in New York would not handle some of Mr. DeAngelis' business in 1963?

A I knew that Morgan and First National City Bank did not handle his business.

Q Did you know in 1963 that Mr. DeAngelis had previously been investigated by the SEC?

A I don't remember.

Q Did you know in 1963 that Mr. DeAngelis had been involved in a dispute with the Internal Revenue Service?

A No, I don't think I did. I didn't know it right now.

Q Did you know it in the fall of 1963, that Mr. DeAngelis had been suspended from the Chicago Board of Trade in the spring of 1963 in connection with a wash sale?

A Not to my recollection.

Q Isn't it fair to say that you became somewhat

concerned by the end of October, the beginning of November, 1963, because you believed Mr. DeAngelis might be overextending himself and in view of what you knew about the Gobel experience you were somewhat afraid that he might go bankrupt again?

A Let's put that date early in November.

MR. MINNEROP: Your Honor, I believe we havegone over this already with this witness a little while ago.

THE COURT: I think so.

MR. HARRIS: That was the end of it, your Honor.

Q Mr. Anderson, did Mr. Berg tell you at any time prior to November 20, 1963 that he had had a meeting with Mr. DeAngelis during 1963?

A No, sir.

Q Do you recall, Mr. Anderson, whether Mr. Berg told you prior to November 20, 1963 that he had had some discussions with representatives of Bunge and Continental Grain Corporation in connection with Mr. DeAngelis, during 1963?

A He did not tell me that.

Q Did Mr. Berg tell you prior to November 20, 1963, that he had had a meeting with Mr. Stevens

Q My question was just do you recall Mr. Landau being on the committee in 1963.

A Oh, yes, he was on the committee.

Q Mr. Anderson, going back now to November 13, after your conversation with Mr. McHale when you heard his estimate that Allied held 50 per cent of the total outstanding soybean oil and cottonseed oil long contracts, what did you do, if anything?

A First I tried to call Mr. MacDonald but he wasn't in his office. And then I called Mr. Klein. Mr. Klein was with Bunge and he was a fellow member of the executive committe of the exchange. And I told Mr. Klein that some rather grave matters had come up about the produce exchange and I wanted to talk about it, and he said come on over.

Q When you called Mr. Klein did you know that Mr. Klein was a customer of Merrill Lynch's?

A Mr. Klein?

Q Well, his corporation, Bunge.

A Yes, I knew that Bunge was a customer of Merrill Lynch.

Q Did that all enter into your decision to call him at the time?

A I called him because he was a member of

the executive committee of the exchange, as was I.

Q After your telephone conversation with Mr. Klein what did you do?

A I went over to his office.

Q What happened when you got there?

A Mr. Klein was there and Mr. Forti, who I think I testified before was a member of the Cottonseed Products Committee. And I told them what Mr. McHale had told me, namely that he was virtually certain that the Russians would not be buying any oil, and secondly, that he thought that DeAngelis held 50 per cent of the combined interest on both changes, on the long side.

And Mr. Klein said, "I didn't think it was that big."

And I said, "Well, I think we have got to check this out to verify."

So a call was placed to Mr. Berg at the Exchange and I spoke to Mr. Berg, and I told him, "Bob, I have been informed by Jim McHale that he estimates that the DeAngelis group hold 50 per cent or more of the combined long side of the soybean oil and cottonseed oil contracts, and that he feels very sure that there is no Russian sale in the offing, and I want you to call the CEA and find out whether his estimates are correct."

He said the he would do so. And then Mr. Klein and Mr. Forti and I left Bunge's office and went over to the Produce Exchange.

Q While you were at Bunge's offices or during

the preceding phone call that you had with Mr. Klein that led to your going over there, did Mr. Klein tell you that he had had a meeting that very morning with Mr. DeAngelis?

A No, sir.

Q Did Mr. Klein tell you anything that he knew about Mr. DeAngelis' position?

A He said he didn't think it was as big as Mr. McHale did.

Q Did he see anything beyond that?

A No, sir.

Q Did Mr. Forti say anything?

A No, sir.

Q When you told Mr. Berg -- suggested to Mr. Berg to call the CEA did he indicate to you that he had previously tried to find out Allied's position from the CEA but had been rebuffed?

A No, he did not. He said he would place the call.

Q Did you have any additional discussion with Messrs. Klein and Forti while you were at their offices, other than what you have told us?

A I don't think so, no.

Q How long did the meeting last?

A In Klein's office?

Q Yes, sir.

A Five minutes, and then the time it takes to make a telephone call.

Q Did you tell Mr. Klein at this meeting at Mr. Klein's office or in the preceding telephone call to Mr. Klein that you were afraid that Mr. DeAngelis might be developing a squeeze?

A I think at some point that it is unlikely as it seems, we have to look into that.

Q Okay. Now, I believe you were at the point where you and Mr. Klein and Mr. Forti are going over to see Mr. Berg.

A Yes, sir.

Q That was at the Produce Exchange, with Mr. Berg?

A At the Produce Exchange.

Q Did you meet with Mr. Berg that day?

A Yes, we went directly to Mr. Berg's office and I asked him if he had called the CEA and he said yes, he had called them, but that Mr. Robinson of the CEA, to whom he had spoken had to check with Mr. Caldwell, that was the head of the CEA, to find out whether he could realize the information and that Berg was waiting

for Robinson to call him back.

So while we were standing there the phone rang and Mr. Berg related the information to us that Mr. Robinson had said that the information we were taking would be made available to the Exchange on a confidential basis through the office of the Commodity Exchange Authority in New York the following morning.

Q Did you have any further discussion with Mr. Berg on November 13th?

A Not that I can recall.

Q Did you have any further discussion with Mr. Klein or Mr. Forti on November 13th?

A Well, we walked back a block or so together, and then I went down in the subway and went home. I don't know what we talked about on the street.

Q Did you arrange with either Mr. Klein or Mr. Forti or Mr. Berg to meet again on November 14th?

A No, sir.

Q Let's turn our attention to Thursday, November 14, 1963, Mr. Anderson.

Did you go to see Mr. Berg that day?

A Yes, sir. First thing when I got to my office I called him up.

Q What occurred during the telephone conversation?

A I said, "Bob, am I right, is it 50 per cent?"

And he said, "No, it is 90 per cent."

Q Was that the entire telephone conversation?

A Well, that is all I can remember of it.

Q Do you recall what you did next in connection with the cottonseed oil futures market?

A Yes, sir. I picked up the telephone and I called Mr. Alex Caldwell in Washington, who was the head of the Commodity Exchange Authority.

Q Had you known Mr. Caldwell prior to that?

A For many years.

Q Did you speak to Mr. Caldwell?

A Yes.

Q As best you can recall, what did you say to Mr. Caldwell and what did he say to you?

A I said, "Alex, what in the devil do you do with a market where one interest controls 90 per cent of the long side?"

And he said, "Well, this is a tough question, I have never been faced with quite that situation before."

He said, "It could come to the point where you would have to liquidate the market at a fixed price, but," he said, "that is a very dangerous thing to do and could have bad implications not only for the Produce Exchange

but for all commodity markets in general."

And I said, "Well, what do you think about the possibility of spreading this thing out by getting some other interest to take over the position of the long side? Liquidating it this way."

And he said, "Well, it certainly was worth exploring,"and I asked him if there were more than one party involved in buying out this long position, whether it would give us anti-trust problems, and he said that was not something he was competent to comment on.

And I promised to keep him informed, and that was -- oh, I think I told him we were going to have a special meeting of the Exchange that afternoon.

Q Prior to calling Mr. Caldwell, Mr. Anderson, had you told anyone at the Produce Exchange you were going to do so?

A No, sir. I hung up from Berg and started calling Caldwell.

Q Didn't Mr. Caldwell tell you during that telephone conversation that the first thing to find out is if Mr. DeAngelis would reduce his position?

A No, sir, I don't think he did.

Q Do you recall whether you suggested to Mr. Caldwell that that would be an appropriate step, to

call Mr. DeAngelis and ask him to reduce his position?

A I don't recall making any such suggestion.

Q Let me show you Plaintifff's Exhibit 35 for identification and see if that refreshes your recollection?

A I still don't recall saying that to him.

Q Do you recall whether or not you told Mr. Caldwell that you were afraid that Mr. DeAngelis had overextended himself to the point where he would be in danger of bankruptcy and if he went bankrupt it would have a wide spread effect on others in the market?

A I don't specifically recall saying that. I was concerned about his financial position.

Q Do you recall suggesting to Mr. Caldwell that whatever action the New York Produce Exchange took it should be coordinated with the Chicago Board of Trade?

A I thought he said that to me.

Q In any event, do you recall that subject being discussed?

A I think he did say that to me, yes.

Q Did you respond to that?

A I'm sure I did.

Q Do you recall what you said?

A I agreed with him.

Q Do you recall whether he suggested that

Q On November 14th do you recall approximately when the special meeting of the Board of Managers took place?

A Well, a few minutes after the close.

Q It was in the afternoon then?

A Yes.

Q Prior to that meeting, sir, do you recall having any discussion with either Mr. Klein or Mr. Forti concerning the news that you had learned that morning?

A No, I didn't talk to either one of them.

Q Did you talk to anyone from the Produce Exchange prior to that special board meeting about the information that you had learned?

A No, sir.

Q Do you recall testifying --

MR. MINNEROP: Can we have the page number, please?

MR. HARRIS: I'm trying to get the date first.

Q -- on April 6, 1964, page 2-B, Mr. Anderson, being asked these questions and giving these answers:

"Q Did you tell anyone what Allied's position was after you found out?

"A I must have discussed it with the officials of the Exchange.

"Q Who would that be?

"A Mr. Berg, Mr. MacDonald, other members of the Executive Committee.

"Q Did you discuss it with anyone at Bunge?

"A Well, the only two people at Bunge that I might have discussed it with, I suppose, were either Mr. Klein or Mr. Forti, and they both knew it.

"Q How did they know it?

"A I would have assumed that Mr. Berg had told them. I don't know. Maybe I did mention it to them. I really can't say. Maybe I told them."

Do you recall being asked those questions and giving those answers?

A I don't and I don't recollect at this time ever talking to these gentlemen.

Q Let me just show you the questions and answers.

A I see them there. No question I testified to that, but I have no recollection of ever having talked to Klein or Forti about it. I did talk to Exchange officials about it obviously that afternoon.

Q In any event --

A Mr. Klein would have been one of them.

Q In any event, your recollection of the events

And I sent that over to him.

THE COURT: Who is Mr. McCarthy?

THE WITNESS: At that time he was the Chairman of the Board of Merrill Lynch, the big boss.

THE COURT: Oh, I see.

Q Mr. Anderson, I believe you already indicated there was a special meeting of the Board of Managers held on the afternoon of November 14, 1963.

A That is correct, sir.

Q You attended that meeting; did you not?

A I did.

Q That was a meeting when a Control Committee was established; was it not?

A Yes, sir.

Q At the Board meeting of November 14th, sir, did you report on your telephone conversation with Mr. Caldwell?

A. Either during the meeting or before the meeting I did report on my conversation with Mr. Caldwell.

MR. LIMAN: Could I have the limitin instruction since my client wasn't present at this meeting, your Honor? I think at the very least instead of my having to stand up --

THE COURT: This was the meeting of --

MR. LIMAN: This was the November 14th meeting.

THE COURT: Mr. Vogel was not present.

All right, you understand that, ladies and gentlemen.

Q Just so the record is clear, Mr. Anderson, isn't it correct that Mr. MacDonald was present, Mr. Klein was present and you were present among the others that were present?

MR. MINNEROP: Can we know what you are referring to?

THE COURT: The point is, we are referring to the November 14th meeting and the testimony has been from at least two or three people as to who was present.

MR. MINNEROP: I meant which document he is referring to.

THE COURT: Let's move from that point.

Q Do you recall what you said and to whom -- I think you said it was before the meeting -- about the subject of the Caldwell conversation?

THE COURT: He said before or during.

A I don't recall precisely what I said, but I did inform the Board that I had talked to Mr. Caldwell in substance of what was discussed.

Q Did you tell them that Mr. Caldwell had said that it may be that the market would have to be closed and the contract settled?

A Eventually closed, but that he had warned that this was a very dangerous thing to do, not only for the Produce Exchange but for the other exchanges as well.

Q Do you recall telling the Board on November 14th that Mr. Caldwell had suggested that that was the only way out?

A I don't believe he did say that that was the only way out. He said, "We might eventually have to do that," and we discussed at least one other way out.

He said, "It might be the only way out."

Q Let me seek to refresh your recollection, Mr. Anderson, by reading to you from your testimony of April 6, 1964, starting at the bottom of page 4B.

MR. MINNEROP: Would you give us a chance to catch up with you.

MR. HARRIS: Surely.

MR. MINNEROP: Thank you.

Q "Q At the meeting in which the control committee was appointed, which would be Thursday, November 14, 1963, was there any discussion about closing the exchange or offsetting a settlement price?

"A I believe I told the board that the head of the CEA had suggested that this was the only way out.

"Q How did you know that the CEA so stated?

"A Because he stated it to me.

"Q When did you talk to him?

"A On that same day."

I would like to show you those questions and answers and ask you if that refreshes your recollection that that is what you told the board on November 14, 1963? It starts here.

A Well, I'm not prepared to believe that that is literally what I said.

I said I had suggested that this might be the only way out. That's what I believe I told the board.

Q In any event, you testified, though, did you not, on April 6 that you told the board that the head of the CEA --

A That's what the transcript shows.

Q Thank you.

Do you recall whether the board was informed at that meeting by yourself or someone else in your presence that Mr. DeAngelis held 90 per cent of the long position?

A I was under the general impression that the board was aware of this. Whether the precise figure of 90 per cent was used or not, I don't know.

I feel sure that the board was informed that he had an overwhelming long position.

Q Was Allied's name or Tino's name mentioned at that meeting?

A Well, everybody knew who had the long position. Whether it was mentioned, Idon't know.

Q Do you recall telling the board at the meeting of November 14, Mr. Anderson, that the current cottonseed oil futures market was certainly an unusual one?

A I don't recall saying that; no, sir. It was.

Q Do you recall the appointment of the control committee at that meeting?

A Yes, I do.

Q Were you originally appointed to that control committee, sir?

A No, I never was on the control committee.

Q You were never appointed to the control committee?

A Well, there was some talk about appointing me to the control committee at the meeting and I declined.

Q Did you decline there at the meeting of the 14th or some subsequent time; do you recall?

A Well, I must have declined that day.

THE COURT: Excuse me. Does that make a difference?

MR. HARRIS: I hhink I'm entitled to explore, your Honor, the conflict between some of the testimony and some of the minutes.

THE COURT: Not things thatare really unnecessary.

What difference does it make, Mr. Harris,

the minutes were corrected at the June 1964 meeting.

Do you recall attending any board meetings prior to June 1964 after November 14?

A Yes. I recall a meeting on November the 20th when we officially closed out the exchange.

Q Weren't there meetings during many of the months of 1964, prior to June?

A I don't know.

THE COURT: Mr. O'Donnell, were there?

MR. O'DONNELL: I believe there were, your Honor.

THE COURT: All right.

MR. HARRIS: I'm going to establish that, your Honor.

Q Can you recall why it was that it was not until June 1964 that there was a correction made to the minutes of November 14 concerning your position on the control committee?

A Probably because it was not until sometime in May that I got around or Mr. MacDonald or Mr. Berg got around in going through these minutes again. When I discovered that this was in here, I called up Berg and said, "This is incorrect," and he said, "You are right. I'll have it changed."

Q Did you have a conversation with Mr. Caldwell on November 15, the day after the special board meeting that we have just been talking about?

A Yes, I did, sir.

Q Will you tell us what transpired during that telephone call?

A Mr. Caldwell called me up and he said "What happened?"

And I said "We had a meeting of the board of managers and appointed a control committee."

And he said, "What's the control committee going to do?"

And I said, "I don't know, I'm not on it, and I suggest you call Mr. MacDonald."

And he hung up.

Q Did you have any further conversation with regard to the -- with Mr. Caldwell, with regard tothe subjects you had discussed with him the day before?

A I believe that was the entire conversation, sir.

Q Did you suggest at the board meeting of November 14, sir, that the exchange ought to call Mr. DeAngelis and find out if he was willing to reduce his position?

their customers were, and then you had to take the -- if one customer had his position among three or four or five brokers then you had to add up those positions to see what that one individual interest had.

Q Did anyone at the meeting of November 14 suggest that you, Mr. Anderson, should canvass the vegetable oil trade and see if anybody is willing to take off these long contracts?

A Suggest that I do this?

Q Yes.

A No, sir.

Q Mr. Anderson, did Mr. MacDonald ever tell you that he had a conversation with MR. DeAngelis during the period November 14 to November 20, 1963?

A No, sir.

Q You said, "No, sir"?

A That's right.

Q You recall, do you not, that on the evening of the 18th, at least in the afternoon of the 18th the executive committee established a 25-point limit for trading of cottonseed oil futures on the 19th?

A Yes, that is correct.

Q Did you participate in that decision?

A Yes, that's correct, I was part of the executive committee.

Q Do you recall how that decision was made? And by that I mean --

A It was made by telephone round robin call. I don't know whether the call was made by MacDonald or Berg, but that's what occurred.

Q Who called you, do you remember, if anyone?

A I don't remember whether it was either MacDonald or Berg, one or the other.

Q Did you speak to anyone else about the subject?

A No, I didn't.

Q In other words, either MacDonald or Berg called the other people involved?

A Exactly.

Q What was your discussion with either Mr. MacDonald or Mr. Berg during that telephone conversation?

A Well, I was told that Ira Haupt and Company was in trouble with the New York Stock Exchange as regards the net capital rule. The net capital rule says that -- at that time it said that a stock exchange firm's total indebtedness could not exceed 20 times

its capital. And apparently Ira Haupt & Company was in violation and Mr. MacDonald was of the opinion that we should limit the movement of the market while this matter was dealt with.

Q Was that the first time you heard that Ira Haupt was in trouble financially, in the fall of 1963?

A It's the first I remember the name of Ira Haupt discussed with me during the whole episode.

Q Did Mr. MacDonald tell you any further information about what the purpose was of setting a 25-point limit?

A As I say, he or Berg explained to me that MacDonald thought we ought to limit the movement of the market while we dealt with this situation of a member who was in trouble with the stock exchange.

Q Was it your intention on the 18th to set a limit simply for the 19th or was it to be imposed for several days?

A There was no limit set on it. It was put on and we could have taken it off at our discretion.

Q And you could have left it on for as long as you wanted to?

A Exactly.

you during that period, and I mean from November 15th to November 18th, that he had had some further discussions with Mr. Caldwell?

A I have no recollection of that.

Q Do you recall Mr. Berg conveying the information to you that Mr. MacDonald had had some discussions with Mr. Caldwell during that period?

A No, I have no recollection.

Q And I take it you had no further discussions with Mr. Caldwell beyond what you have described?

A Once I told him that I wasn't on the Control Committee, he didn't approach me again. Nor I him.

Q Now, let's turn to November 19th, Mr. Anderson. Do you recall attending a meeting of the Clearing Association Board of Directors in the morning of November 19th?

A Around noon, I think.

Q And you were an observer at that meeting?

A Yes.

I had been elected to the Board but I wasn't to take office until December of January or something like that. They invited me over.

Q Prior to going to attend the meeting of the Clearing Association you just mentioned, did you have

occasion to meet with anyone from Ira Haupt & Co. on the 19th?

A Yes, sir.

Q Who did you meet with, sir?

A I met with a Mr. Teiger, or Teiger, I am still unsure how he pronounces it, and a Mr. Brenner, who were partners of Ira Haupt & Co. And I met with them in the office of Mr. Michael W. McCarthy, who was Chairman of Merrill Lynch. And Mr. McCarthy was present.

Q Did you join the meeting that was already going on in Mr. McCarthy's office?

A When I arrived in my office there was a message for me to come to Mr. McCarthy's office post haste. And I did.

Q And Mr. Teiger and Mr. Brenner were already there, I take it?

A They were there already.

Q Can you tell us what transpired when you walked into the room?

A Well, they said that they had come to Merrill Lynch because the Stock Exchange had suggested to them that they come to Merrill Lynch because perhaps we might be able to help them. They were quite agitated, and they told us what their situation was.

Q Can you elaborate on what they told you as to their situation?

A They told us how many contracts of cottonseed oil they had and how many contracts of bean oil they had, and that they were all for DeAngelis, Allied. And they told us that they had been informed by Allied that he couldn't put up any more money to margin his position, and they said that they were in net capital trouble with the Stock Exchange because they had lent money to Allied on collateral to finance the margins in the futures position. And that there was a limit to how much more money they could afford to put up in the clearing house without going into bankruptcy.

Q Did they tell you how much that was?

A I'm sure the figure was mentioned, I don't recall it now. What I recall most is the absolute astonishment of Mr. McCarthy.

Q At hearing this news, you mean?

A Yes.

Q Were you astonished?

A I was, because I had no idea that Haupt had any such position as that.

Q By the 19th you knew that DeAngelis had 90 per cent of the open interest, is that true?

A That is true.

Q And you knew that the open interest was 10,000 contracts or so; so you knew DeAngelis had at least 9,000 cottonseed oil futures contracts?

A That doesn't tell me anything about Haupt.

Q Didn't you know that Haupt was one of the major brokers for DeAngelis in cottonseed oil trading in the fall of 1963?

A As a matter of fact, I had also thought that his chief broker was Comenzo.

Q Are we talking about D. R. Comenzo?

A The clearing firm.

Q D. R. Comenzo & Company?

A Yes. I had heard that Haupt -- I had supposed his business was scattered among 10 or 15 houses.

Q In any event, after the Haupt people told you their financial situation, what next happened at the meeting?

A Mr. McCarthy said to me,"can you think of any way in the world to get these people out of this mess?"

And I said, "Well, the only thing I could think of would be if some trade interest, some dealer in oil or crusher of oil or somebody like that would be willing to take the position over. Other than that, I couldn't

think of any way out."

So Mr. Teiger, I think it was, asked me if I would try and find somebody to do that. So I made a number of telephone calls in an effort to find somebody who was willing to take over the position.

Q Before we get to those telephone calls, I take ityou had not known Mr. Teiger and Mr. Brenner before that day?

A Never had seen them before.

Q At the time you were meeting with Mr. Teiger and Mr. Brenner that we have just been referring to, on the morning of the 19th, had the news come out across the fraud tape that Mr. DeAndelis had filed a petition in bankruptcy?

A No, I don't think so. I think it came out in the afternoon.

Q Is it fair to say that Mr. Teiger and Mr. Brenner at that point were fairly desperate?

A Yes.

Q So they agreed to your suggestion that you would try and make some money calls and see if somebody would be willing to take over?

A No, they asked me to do it.

Q Do you recall who you called, sir?

A I called an awful lot. I can recollect some of them. I called Anderson,Clayton & Company first. And I called Proctor & Gamble, and I called Lever Bros. I called Continental Grain, I called Cooke & Company in Memphis, and perhaps others. But that is all I can remember right now.

Q Did you call Bunge?

A Possibly, I don't remember.

Q Do you recall if Mr. Teiger or Mr. Brenner indicated to you that they had attempted to contact Bunge and ask Bunge to take some of their contracts?

A No, they didn't.

Q I take it your phone calls were unsuccessful?

A Well, Anderson, Clayton said that none of their junior executives were interested, but they would try and get hold of the chairman who was on an airplane and if they got him and he was interested they would call me back, and they never did.

Mr. Cooke of Cooke & Company said that if they could get rid of the cottonseed oil somewhere else he might be willing to take the soybean oil, but the cottonseed oil had to go first.

Q When you left to go to the meeting of the Clearing Association were Mr. Teiger and Mr. Brenner still

there at Merrill Lynch?

A Yes. We were hoping that some of these calls would be returned.

Q Did they wait around while you left to go to the meeting?

A Yes, they did.

Q After the meeting at the Clearing Association Board, did you return to your office?

A Not directly to where they were. I returned to my own office to see if anything important had come up in my absence.

There was a message for me there to call a gentleman whose name I can no longer recollect, but he was an attorney at Bunge.

Q Would it refresh your recollection if I told you Mr. Kenner?

A I will accept it, sir. But I still don't remember the name.

Q In any event, did you return that call?

A I did.

Q Did you speak to the gentleman?

A I did, yes.

MR. HARRIS: Mr. Fryer, can we stipulate that it was Mr. Kenner just to avoid using the term gentleman?

MR. FRYER: Yes, sure.

Q Can you tell us as best you recall what your discussion with Mr. Kenner consisted of?

A Well, he said he had a customer in vegetable oil, soybean and cottonseed oil who had failed to meet a margin call and did I think he could sell those positions out.

I said to him that he could obviously not sell the cottonseed oil since it was a limit down, but that bean oil was still trading and he could try to sell it in Chicago.

So an order was placed in Chicago with Mr. McHall to liquidate the Bunge position in soybean oil, which I believe was 2,500 contracts.

Q What did you do after this telephone conversation with Mr. Kenner?

A I went back over to see Mr. Teiger and Mr. Brenner from Haupt who was still over there and I ascertained that nobody had called back.

Q By the way, where were they at this point?

A They were in the anteroom to Mr. McCarthy's office.

Q I see.

Before you go on, can you tell us approximately what time of the day we are at now?

A 1:00, a little after. 1:00, 1:30, somewhere in there.

Q Okay.

A I said to them, "Well, gentlemen, it is obvious that I can't find a cash buyer for your contracts, I can't help you, and I would suggest to you that the only other suggestion I can make to you is that you try and sell some of your soybean oil in Chicago and lighten this thing up."

They asked me if I would sell it for them, and I said I didn't feel that they should go through me because I had a large order ahead of them.

Consequently, I suggested to them that they go to another firm, and they asked me who did I suggest, and I told them that the next largest commodity house was Bache.

So they said they were going over there.

I called Mr. Tessler, who was my opposite number at Bache & Company, and asked him to receive the gentlemen.

Q When you referred to the large order that was ahead of the Haupt people, were you referring to the order Mr. Kenner of Bunge had given you?

A Yes, sir.

Q I see.

In any event, did Messrs. Teiger and Brenner

leave and go on to Bache, as far as you know?

A They left and I understand that their soybean oil position was liquidated by Bache.

Q That is on the Chicago Board of Trade; isn't that right?

A Yes.

Q Mr. Anderson, was it customary for you to receive orders from customers like Bunge directly?

A No, it was -- it never happened, but this was a strange circumstance.

Q Mr. Anderson, do you recall that there was a meeting attended by persons from the Produce Exchange and from the Clearing Association and some other people on the afternoon of November 19th?

A On the afternoon and well into the evening.

Q You were at that meeting; isn't that right?

A I was; yes, sir.

Q Do you recall when that meeting was called, Mr. Anderson?

A Not exactly; no, sir.

Q Was it called on the 19th itself or had it been called earlier; do you recall?

A It must have been called on the 19th because we set that limit on the evening of the 18th. Sometime

during the 19th. It was a busy day. I don't remember exactly when it was.

Q I take it you did not call the meeting?

A No, no, the Exchange. Mr. Berg called it.

Q I see.

As best as you can recall, can you tell us what transpired at the meeting of the afternoon of November 19th?

A Well, present in addition to the -- there were the directors of the Clearing Association and the Executive Committee of the Produce Exchange because it had proved impossible to get the Produce Exchange Board to go on such short notice. Then there were representatives there from Ira Haupt & Co. and from Williston & Beane.

Mr. Beane was there himself and a Mr. Donald Conlon, who was Mr. Beane's partner. I must say I have forgotten the names of the two gentlemen who were there from Haupt, or maybe it was three.

Q Was it Mr. Teiger and Mr. Brenner --

A No, it was someone else. I'm sure it is in the record. The name is gone from me.

Q I show you Exhibit 13-A.

A Yes, Kaufman and Kammerman, that is correct.

That is the names.

Q That refreshes your recollection, does it?

A Yes.

Q Had you known either of those two gentlemen before that afternoon?

A Kaufman and Kamerman?

Q Yes, sir.

A No, I never met either one of them before.

Q In any event, I think you were going to tell us what took place at the meeting.

A Well, both Mr. Beane speaking for his firm and Mr. Kamerman speaking for his firm told us essentially what Haupt had told Mr. McCarthy that morning, and that if the market went down below a certain point, they themselves would be unable to put up any more margin, but that if it were closed out at a price tolerable to them, that they would recover funds from the clearing house.

We discussed this in the meeting at great length. There was a lot of argumentation, but it was finally agreed that the only thing left to do was to put a settlement price on all the contracts and close itout.

Q After their reporter or after the report given

by the Haupt people as to their financial condition and the Williston & Beane people -- did they remain at the meeting?

A They stayed until we set the settlement price. They wanted to know what it was going to be.

Q During the discussion that you said that took place prior to the decision, was there any discussion about what was going to happen if you didn't set the settlement price?

A Well, I think that Mr. Beane and Mr. Kamerman had made it very clear what was going to happen if we didn't set a settlement price. They were going to go broke.

Q Was there any discussion as to what would happen to other clearing members and other trade houses if Haupt --

A It is very hard to tell what the repercussions of a bankruptcy are going to be. It is very possible that other small clearing members might have become insolvent. It depended on what their positions were.

Q At the meeting of November 19th, Mr. Anderson, did you relate to the people present your efforts of that morning or early afternoon in making telephone calls to see if anybody would take over Haupt's position?

A I think it must have been discussed because there had been one other alternative and it had already been explored.

Q Did anybody indicate to you at the meeting of the 19th that the Control Committee or any other official of the Produce Exchange had similarly attempted to survey the industry and see if anybody could take over Haupt's position?

A I don't remember.

Q In any event, Mr. Anderson, did you stay through the evening and participate in the fixing of the settlement prices?

A I did, sir, yes.

Q We have already had testimony, and I won't go through the whole thing, but isn't it fair to say that the settlement prices were fixed by figuring out through analogy to the soybean oil market in Chicago what the price of cottonseed oil futures would probably have fallen to, approximately what price it would have fallen to on the 19th if the 25 point limit wasn't in effect?

A That is correct.

Q And they were settled out at about that price?

A Exactly that price.

gwlf 9 Anderson-direct 3269

Q Do you recall having a tel phone conversation with a Mr. Robinson of the CEA on November 19th?

A Yes. I think at some time when I was trying to negotiate these cash sales for Haupt that I talked to Robinson once again about whether they would approve such a takeover and about some of the implications of this.

Q Did Mr. Robinson indicate that they would or would not approve?

A I think he said that if we could arrange it, they were all for it.

Q Do you recall having a telephone conversation with a Mr. Robert Raclin of Bache & Company on November 19th?

A Yes. The meeting broke up quite late. I had no lunch and I went to a restaurant for dinner, and while I was waiting for my dinner I called Mr. Raclin on the telephone and told him that the cottonseed oil position of Haupt had been liquidated by the action of the Exchange, and he was glad to know this because he was trying to line up buyers for their soybean oil position on the Chicago Board of Trade.

Q You said after the meeting you hadn't had lunch yet and you were going to have dinner.

Which meeting are you referring to?

A Yes, I did.

Q Do you recall telling the meeting that severe financial losses and hardship would undoubtedly result and that many small companies and some larger ones in the vegetable oil field would suffer sever losses with a possible bankruptcy and that many banks and financial institutions would suffer unnecessary losses and hardship?

A Yes, I did. I said that in the context that if we hadn't settled the contracts out.

Q Yes, sir. If the market had been kept open.

A Exactly.

Q You knew, did you not, on the evening of November 19 and the morning of November 20 that in the event Haupt and Williston & Beane defaulted, that other clearing members of the New York Produce Exchange Clearing Association --

MR. MINNEROP: Objection, repetition, your Honor. We have gone over this before.

THE COURT: I'm not positive of that. I think the question is, did he know they would have to put up the margin.

MR. HARRIS: That is correct. I don't think I have asked him that.

THE COURT: I agree with you, Mr. Harris. I don't think you have either.

Q You knew, did you not, on the night of November 19 and the morning of November 20 that in the event of a default by Ira Haupt and Williston & Beane, that other clearing members might be required to put up additional monies?

A Yes, I was aware of that, sir.

Q You knew Merrill Lynch was a clearing member, did you not?

A That was not my principal concern.

Q But you did know Merrill Lynch was a clearing

member?

A Yes, I was aware of that.

Q Did anybody report at the meeting of the 19th or the meeting of the 20th as to what action, if any, had been taken by the control committee?

A It was academic at that point. Nobody reported on it.

MR. HARRIS: Excuse me one second, your Honor. I'm trying to regain my place.

THE COURT: It's time to adjourn, in any event.

We will meet tomorrow morning at ten o'clock.

(Jury absent)

THE COURT: Now that Mr. DeAngelis and Mr. Gittleman have testified, are you in any firm position to tell me how long your case is going to take?

MR. HARRIS: If I can get my witness list, your Honor, I can tell you how long I expect to be. The only thing I can't account for, to what extent there is going to be cross-examination.

THE COURT: I think that the cross-examination of Mr. DeAngelis was such that certainly time has been saved on the trial. I think you expected it to be

Q Did you ever check about any of the personnel of Merrill Lynch to see if Merrill Lynch was supplying the correct information as required by the new rule?

A I am perfectly sure, sir, that I did not.

Q Do you recall yesterday, Mr. Anderson, indicating that there was two ex-pit trades in which Merrill Lynch was involved during 1963 which the exchange asked some questions and they came to your attention?

A Yes, sir.

Q Do you recall approximately when that was?

A The dates are on the letters which were submitted in evidence.

Q Let me show you Plaintiff's Exhibits 80 to 83 for identification and ask you if that's the information you were just referring to, which indicates the dates of these?

A The first one I apparently asked Mr. Forti of Bunge about on August the 26th. And then the second one Mr. Forti called me and volunteered the information, on September 3rd.

Q Let's talk about the first one, the August 26. You wrote a memo to the file with respect to your conversation with Mr. Forti, did you not?

A I did.

Q That is Exhibit 83 for identification?

A Yes, sir.

Q Do you recall what led you to call Mr. Forti?

A Yes. Mr. Berg made an inquiry about the nature of the ex-pit because apparently Mr. Peters had given an explanation of this transaction -- when he had asked Peters for an explanation of this transaction Peters had replied to the trades of August 14 and 15 were to rectify a purchase made in error on August 13, and Mr. Berg asked me if I would verify that this was correct and write a letter to the exchange stating that three trades were made to rectify an error.

Howver, Mr. Forti said that there was no error on his part; that when he bought cash oil on August 13 he had no idea that he would resell it on the 14th and 15th. He said he sold the oil because he was offered a profit on the transaction.

Q Did Mr. Berg call you, sir?

A I just testified to that, yes. Mr. Berg asked me if I would verify.

Q And then you called Mr. Forti, is that what happened?

Q These are all for Bunge; isn't that correct?

A I wouldn't have the slightest idea. I never heard of them before.

Q In your memorandum of August 26, Mr. Anderson, you also referred to the fact that Mr. Forti mentioned a second ex-pit transaction involving a thousand cars.

Do you recall writing any memorandum about a second ex-pit transaction, and also notifying the produce exchange?

A Yes. Mr. Forti called me on September the 3rd and said, in view of our conversation of August 27 he wanted me to know that there was another -- he would probably ex-pit the balance of his December short position sometime today against where house receipts that he had sold.

He stated he was telling me this in advance in view of our recent conversations because once again the purchaser of the warehouse receipts is the same party from whom he recently bought them.

However, he said that this party had bid him a good price for the oil and he saw no reason why he shouldn't sell it since there was no prearrangement at the time he originally bought the oil, and he is selling the warehouse receipts at a profit to his

firm.

I then wrote a letter the same day to Mr. Berg at the produce exchange which contains verbatim what I just read you.

MR. HARRIS: Your Honor, I would like to offer these two letters, the letter and the memorandum.

MR. O'DONNELL: Is this September 3, 1963?

MR. HARRIS: Yes, Plaintiff's 80 and 81.

MR. MINNEROP: No objection.

MR. O'DONNELL: No objection.

THE COURT: In order for Mr. Liman's comfort, who are they being offered against?

MR. HARRIS: They are being offered against Merrill Lynch, Harry B. Anderson and the produce exchange.

MR. O'DONNELL: Only the letter with respect to the produce exchange?

MR. HARRIS: Yes, the produce exchange. It's only the letter, and the memorandum is against Merrill Lynch and Harry B. Anderson.

(Plaintiff's Exhibits 80 and 81 were received in evidence)

Q I believe when you answered my question, you, in effect, read the memorandum.

elr3 Anderson-direct 3303

Q Did Mr. Berg ever tell you, Mr. Anderson, during 1963 that Mr. McMinn of the CEA had inquired concerning certain ex-pit transactions which had taken place on February 27, April 3rd and September 30?

A Of 1963?

Q '63, yes, sir, I'm sorry.

A Not to my recollection.

Q Did anyone from the produce exchange ever suggest to you that the business conduct committee of the produce exchange should look into the matter of the ex-pit trade?

A The business conduct committee?

Q Yes, sir.

A No complaint was ever filed before the business conduct committee.

Q Did anyone ever suggest to you? That was my question. Did anyone ever suggest to you during 1963 that the business conduct committee ought to look into the matter?

A That is not the way the business conduct committee operated on the produce exchange, sir.

Q How did it operate on the produce exchange?

A It was the practice on the produce exchange

for the business conduct committee to act as a sort of a court, and when one of the other committees or an officer of the exchange or an individual member of the exchange, or even a client of some member made an allegation against a member of the exchange, then the business conduct committee convened, looked into it, just in the same manner as this court is operating now, and heard witnesses, and all the rest of it.

Q In other words, the business conduct committee of the produce exchange didnot initiate its own investigations?

A No, that was not the custom. The initiation would be done by somebody else.

Q Who would that be?

A As I said, it might be another committee, if it had to do, for instance, there was a case where we had a floor broker up before the business conduct committee, and that charge was brought against him by the supervisory committee on the floor; the ones who looked after trading. They said he violated the trading rules, and we had a trial.

Q You indicated yesterday you were also chairman of the cottonseed products committee in 1963?

A That's right.

Q Did anybody ever suggest to you that the cottonseed products committee of the produce exchange ought to look into the ex-pit trading that was going on in 1963?

A Well, I believe in 1962, according to the evidence that has already been introduced here, the cottonseed products committee revised the rules on ex-pit trades so that more information would be made available to the managing director of the exchange and to the CEA.

Q I don't think that was my question, though, sir. I asked if anyone during 1963 ever suggested to you as chairman of the cottonseed products committee that it, the committee, ought to investigate the ex-pit trading that was going on?

A No, sir.

Q Did anyone ever suggest to you during 1963 in your capacity as chairman of the cottonseed products committee that the committee ought to check into what kind of reporging was going on in ex-pit trading to see if it conformed with the rule change that had taken place in the end of '62?

A No, sir.

Q Mr. Anderson, during the period of November 13

to November 20, 1963, did you attempt to monitor the trading in cottonseed oil futures contracts that Merrill Lynch participated in as broker?

A No, I would have had no way to monitor those trades. I don't understand what you mean.

Q Did you attempt in any way to keep track during that period of time of what trades Merrill Lynch was engaging in on behalf of its customers?

A I knew in a general way that Merrill Lynch was doing very little business on the New York Produce Exchange.

Q Did you make any attempt during the period November 13th to November 20, 1963 to monitor any of Bunge's trading in cottonseed oil futures through Merrill Lynch on the New York Produce Exchange?

A I'm not sure that Bunge did any business through Merrill Lynch on November -- during that period, but I didn't monitor it.

Q Let me see if I can refresh your recollection, Mr. Anderson, by showing you Plaintiff's Exhibit 217. Isn't it a fact that Bunge during the period November 15th through November 19th sold a net -- sold short a net of 253 cottonseed oil futures contracts?

A Wait a minute now.

(Pause.)

A Yes, that seems to be correct.

Q Isn't it further true that other customers of Merrill Lynch in trading that went on during the period November 14th to November 19th sold a net short position of 155 contracts?

A Well, nobody sells a net short position. If you mean that Merrill Lynch on balance sold 155 more contracts than it bought during that period, that is correct.

Q That is what I meant, sir.

Yesterday, Mr. Anderson, we had made reference

that some of the contracts that Merrill Lynch was clearing for Bunge were Allied's contracts that Bunge was holding for Allied?

A No, I did not know that. We carried an account for Allied, customer account, and I had -- we carried an account for Bunge customers. We had such an account since 1932.

I had assumed that this account was for the foreign corporations of Bunge since Bunge, New York, United States Corporation, was a member of the Exchange. The account also had grain in it.

Q This had nothing to do I take it with your inquiry to Mr. Frommer which led to the memo of 11/12/63 that we looked at yesterday concerning --

MR. MINNEROP: I object to the form of the question.

THE COURT: I don't think that question can be answered. I don't know what you mean by this. What is this?

MR. HARRIS: Whether these contracts that Bunge was holding in its account were for Allied or not.

Q I take it that that fact was not a factor in your request to Mr. Frommer to inform you as to the status of Bunge's account?

A I didn't ask Mr. Frommer to inform me as to the status of Bunge's account. I asked Mr. Fromer to inform me of large long positions we might have in the cottonseed oil market.

Q Mr. Anderson, you know, do you not, that a manipulation of the market, the commodities market, is an attempt to cause unilateral price action by artificial means?

A That is a pretty good definition.

THE COURT: What is the answer?

THE WITNESS: I said that is a pretty good definition.

Q Isn't it correct, sir, that the actions taken by Mr. DeAngelis in the fall of 1963 in cottonseed oil futures constitutes under that definition in the broad sense a manipulation?

A No, I don't think so.

Q Didn't you previously testify that you thought it was?

A I have testified on this subject four times over a period of 12 years. You will have to let me see what I said.

Q Fair enough.

I refer you to your testimony of December 13th,

1965 at page 26 and page 27. I would like to read you a series of questions and answers --

MR. MINNEROP: Your Honor, I think the witness ought to be shown it and should be allowed to look at the context of it.

THE COURT: That is not the rule, Mr. Minnerop. The witness can be caught by surprise.

Q "Q What I am getting at and searching for -- let me start it this way, Mr. Anderson. What would you ordinarily classify in your judgment as being a manipulation?

"A A manipulation is in my layman's language an understanding, is an attempt to bring about a unilateral price action by artificial means either by cornering the market or putting out false information or something like that.

"Q Well, within that broad generic definition, would you classify what happened in October and November 1963 as a manipulation?

"A I suppose so. I'm not even sure that the motive -- what the motive of it was.

"Q Did it have an effect on prices, this large accumulation?

"A Yes. It tended to make the price higher

than it might otherwise have been, but I think the effect was less than I would have thought possible.

"Q But what I am trying to stay with is that this large accumulation, from whenever it began to whenever it ended, did have an effect on the price of futures, didn't it?

"A Yes, I think it did. I think you could probably demonstrate that with the charts.

"Q And in addition it was an artificial accumulation, was it not?

"A Yes.

"Q And, therefore, it would seem to fit your definition of a manipulation?

"A In a broad sense, yes."

Let me show you the material, the material marked in red, and ask you whether those are the answers that you gave to those questions in 1965?

A Apparently that is my testimony.

MR. HARRIS: I have no further questions, your Honor.

that I am clear and the jury is clear that Merrill Lynch is acting as the agent for the customers. I don't think we have to get that clarified any further, Mr. Minnerop.

Q Mr. Anderson, you have also testified yesterday that on November 19 you referred the partners from Haupt to Bache to attempt there to sell their soybean oil contracts; is that correct?

A Yes, sir.

Q And you indicated, I believe, that you could not accept the order because there was a prior order already from Bunge; is that correct?

A That is correct.

Q And that, in essence, the orders would be competing against each other; is that correct?

A Well, even beyond that, the Bunge orders were entered first.

Q And, therefore, you could not do a good execution for Haupt at that point; is that correct?

A That is correct.

Q If you decided to take those orders, how much in commissions would Merrill Lynch have made?

A I can't give you an exact figure, Mr. Minnerop, because I don't remember what the commission rate was precisely in those days, and it would have

depended to an extent on whether -- how much of this we had crossed in house and how much we would have done with other brokers.

I would estimate somewhere in excess of $100,000.

Q Thank you.

MR. MINNEROP: We have no further questions.

THE COURT: Mr. O'Donnell.

CROSS-EXAMINATION

BY MR. O'DONNELL:

Q Mr. Anderson, you know my name is O'Donnell and with Mrs. Kaye we represent the New York Produce Exchange, Donald MacDonald and Sidney Fashena in this action.

A Yes, Mr. O'Donnell.

Q How many years, Mr. Anderson, have you been in the commodities field or how many years prior to 1963?

A Well, from 1947, '48.

Q From that period up to '63 did you have experiences on other exchanges as well as the New York Produce Exchange?

A Yes, sir.

Q Can you tell me which ones?

A Well, I was a member of almost every commodity exchange in the United States. I was an officer or a director -- not an officer, a director of the cotton exchange, of the cocoa exchange, of the produce exchange. I was on the board of one of the metal clearing associations and on the sugar exchange clearing association.

Q So that as of 1963 when you were serving as a member of the board of managers of the New York Produce Exchange, you had your experience on the other exchanges as well as the New York Produce Exchange; did you not?

A Yes, sir.

Q How long have you been on the board of managers of the New York Produce Exchange?

A I don't remember precisely, sir. Several years.

Q Before 1963?

A Yes.

Q You told Mr. Harris that you observed or knew that the volume of trading was greater in 1963 on the New York Produce Exchange in futures contracts than it had been in 1962.

Did that alarm you in 1963?

A No, sir.

Q Why did that not an alarm to you in 1963?

A Volume on all the exchanges, practically, all the food exchanges was up in 1963, and it's quite normal for volume to fluctuate greatly from year to year on commodities markets.

Q You also told him in 1963 that the open interest, you recognized or knew to be higher in 1963 than 1962.

Did that alarm you, sir?

A No, sir.

Q Why didn't that alarm you in the fall of 1963?

A If the volume was higher it would be natural to expect that the open interest would increase.

Q Is it also right that you told him that the position you knew or observed to be more concentrated or thought there was more concentrated in large traders in 1963 than in 1962?

A I don't remember him asking me that question, sir.

Q Do you recall him telling you in 1963 you observed that deliveries were increased in amount on the produce exchange over 1962?

A Yes, I believe I testified that they were somewhat higher.

Q Were those facts, namely that the deliveries were higher in '63 and '62 any sign of alarm to you in the fall of 1963?

A No, sir.

Q Why not?

A Because the deliverable warehouse for deliveries had been increasing over a period of two or three years.

Q With respect to ex-pit transactions you testified in response to Mr. Harris' questions yesterday, I believe, that you expected that those would be higher in 1963 than in 1962, did you not?

A Yes, sir.

Q Did you find that alarming, sir -- first, why did you expect them to be larger in '63 than '62?

A Because of this increase in warehouse capacity which I just mentioned. The only way that these deliverable warehouse receipts are going to be transferred from one owner to another is either by delivery or by ex-pit. And deliveries were up and ex-pits were up. It seemed quite natural to me.

Q And was the fact that ex-pits were up in 1963 alarming to you in any way?

A No, sir.

Q You assumed, didyou not, Mr. Anderson, assumed or presumed that Allied was a substantial factor in the futures market and the cash market in cottonseed oil in 1963?

A He was reputed to be the largest exporter of oils of all types. He also was a big supplier to the government, and we had, as I think I have testified, heard a number of rumors about his operations on the futures market.

Q Allied was somebody at that time that with respect to the futures market you would expect to be trading and doing a hedging operation on the market, is that correct?

A Yes, sir.

Q Ahen you put all of those factors that we have reviewed in combination or conjunction with each other, did you find that in combination any or all of those factors were alarming to you?

A Well, sir, I think I testified that I had some concern early which was then allayed by the Russian buying, which seemed to -- the idea that we had that the Russians were going to buy seemed to explain the whole operation to me.

Q So that in the fall of 1963 you were not alarmed by those factors in any combination?

A Not until Mr. McHale indicated to me that these factors might be imaginary.

Q That was sometime in mid-November, was it

not, or early November?

A From during the first ten days of November, it gradually developed.

Q Isn't it right that you knew throughout 1963 that Allied had resolved or Mr. DeAngelis had resolved his problems with respect to that Adolph Gobel bankruptcy long ago?

A Oh, yes, I knew that.

Q In fact, Merrill Lynch had been paid its indebtedness that you said it was left holding the bag for; that had been paid by Mr. DeAngelis?

A That's correct, sir.

Q You know, do you not, Mr. Anderson, that the term manipulation is one not defined by the Commodity Exchange Act, is that not right, sir?

A I believe that is correct.

Q With respect to the fall of 1963 as distinguished from any testimony that Mr. Harris is talking about that you had in 1965, is it not a fact that you did not observe any manipulation or squeeze of the market in cottonseed oil in the fall of 1963?

MR. HARRIS: Your Honor, I object, only because of the introduction of the point about the testimony and whatever the testimony was; I don't think

that belongs in the question. I think it made it very unclear.

THE COURT: I gather Mr. O'Donnell is asking for Mr. Anderson to take his mind back, if he can, to 1963 and answer that question with his state of mind in 1963.

MR. O'DONNELL: Yes, sir.

THE COURT: Not in 1965.

MR. O'DONNELL: Yes, your Honor.

MR. HARRIS: I don't object to that.

Q Did you in the fall of 1963 think or observe that there was any evidence to you of any manipulation or squeeze of the market in cottonseed oil futures?

A No, sir. Not until we got the position.

Q Is it right, sir, that if you had had any notion of any possible squeeze or manipulation of the market in 1963 you would have immediately reported it to the board of the New York Produce Exchange?

MR. HARRIS: I object.

A Sir, immediately I got the information -- the suspicion that something was going on, we did immediately report it to the CEA and the produce exchange board.

Q And you never had any occasion in 1963, did

you, to report any evidence of any squeeze or manipulation to the exchange?

A No, sir.

Q Or any suspected squeeze or manipulation?

A No, sir.

Q With respect to your meeting with Mr. Klein over the -- have I got the right name -- over at the Bunge offices on November 13, 1963 after you had gotten that information from your man about thinking that maybe Allied had as much as 50 per cent of the soybean oil and cottonseed oil futures market combined --

A Yes, sir.

Q Do you remember the meeting on November 13 at Bunge?

A Yes, sir.

Q You told us yesterday that you said to those present at that meeting, if my notes are right, that unlikely as it seems, maybe we better explore, or we may have to explore whether there was some kind of squeeze being attempted; do you recall that?

A Yes, sir.

Q Why did you say, unlikely as it seems, back on November 13? Why did you use those words?

A Because the supply of cottonseed oil was

so great that -- plus the fact that in addition to the supply the holders of this oil had enormous warehouse capacity, which could have been licensed in short order. It didn't seem to me that anyone who tried to squeeze the oil market would have been drowned in oil, it seemed to me.

Q You were chairman of the cottonseed products committee at that time, were you not, sir?

A Yes.

Q That was the committee which licensed warehouse space?

A That is correct, sir.

Q How quickly could -- can you tell us how quickly cottonseed oil warehouse space can be licensed by that Committee?

A Well, let's take a specific example. I have been out and seen the storage tanks of Anderson, Clayton & Company in Texas. They only had a small part of those tanks licensed, and they had capacity for many, many, many more tanks than they had licensed, and at that time of the year those tanks would have been filled with oil. So that they could have requested us, and since we already knew all about Anderson, Clayton & Company, and since we had already licensed adjacent tanks and we knew about the refining capacity of Anderson, Clayton Company in Texas, and we knew the financial standing of the warehouser, had already approved his licenses, I would say that we could have licensed all those tanks in a matter of hours.

Q With respect to any suggestion that there was any attempt to be squeezing the market back on November 13, 1963, is it correct, Mr. Anderson, that you would expect the shorts to be scrambling to get oil, if there were any attempt at a squeeze?

A Yes, I would. But those shorts had an awful lot of oil.

Q You found no evidence of any shorts scrambling for oil?

A No, sir.

Q You were shown, I believe, Plaintiff's Exhibit 249, which shows total warehouse receipts uncancelled for November, 1963 and also licensed capacity of tank cars with a figure; do you see that?

A I think this is the first time I have seen it.

Q In any event, does that document, those figures represent only a portion of the visible supply of oil, do they not, which existed at that time?

A A very small proportion.

Q With respect to your testimony yesterday, Mr. Anderson, I believe you testified that during that period in November, 1963 there came a point where you requested a credit check with respect to Allied or Mr. DeAngelis, is that right?

A Yes, I believe I made the request somewhere around the 11th, the same time that I asked Mr. McHale to make an estimate of what Allied's position was.

Q Did I understand you yesterday to tell us that you did get a credit check from some bank?

A I said that I asked for one. I did in fact get a reply.

Q From whom did you get a credit check of Allied or DeAngelis in November?

A Our Credit Department received a reply from the Chase National Bank on November 18, 1963 saying that Allied's credit was excellent.

Q With respect to your services on behalf of the New York Produce Exchange in 1963 ad a member of the Board of Managers and as a member of the various committees you have told us about, did you receive any compensation for your services from the New York Produce Exchange?

A None.

Q Did you consider Mr. Berg to be a competent manager, managing director of the New York Produce Exchange?

A I thought he was most competent.

Q And he had been a competent manager, had he, for some years before that?

A He had been managing director before I ever came on the Board.

Q Did you consider Mr. Donald MacDonald to be competent at his job as president of the New York Produce Exchange?

A I thought he was an excellent president, most competent.

know --

Q Excuse me. That is the Chase Manhattan Bank, not the Chase National Bank, is that right?

A Yes, sir. In addition to that, we did not have anything but a theory from Mr. McHale that Allied didn't have anything on the other side of those contracts, and we had a very large short interest who were using the market for hedging purposes, and closing the market has the effect of kicking the hedge cover right off of a person who owns oil.

And then if the market subsequently declines, the owner of that oil has lost money.

And so, we had to think about the duty of the Exchange to the other side of the market as well as to the long side of the market. So I don't think, and -- I don't think that the Exchange could have closed the market on that day.

In addition to that, Mr. Caldwell, who was the head of the Commodity Exchange Authority, had warned me that this was a very grave action, and one which would have an effect not only on the New York Produce Exchange but on every commodity exchange in the country and in fact into the whole business of futures trading.

Q Is it right, also, sir, that the events

THE COURT: I understand that.

The testimony of Mr. Anderson, his testimony was that he was already committed to try to get rid of the Bunge material, and when he was asked by these other people to take over their account -- I don't know whether that is the technical term -- in any event, he couldn't do it because he told them that this other order was ahead of it.

MR. HARRIS: That is all I want to explore, that point.

THE COURT: You already explored that.

MR. HARRIS: I don't think it is clear, your Honor. I would like to raise some question about that testimony.

THE COURT: Ask him the question that you think is not clear. Let's not go over the whole business again.

MR. HARRIS: Okay.

Q I believe you told me yesterday that the Bunge order came to you by a phone call you received from Mr. Kenner around 1:00 o'clock; isn't that correct?

A That is correct.

Q The Haupt people were there all morning before that phone call, were they not?

A Yes, they were.

Q They discussed with you in the morning trying to get somebody to take over their position?

A They asked me to try to sell to a cash house their position. They did not want to sell futures at that time because they were afraid they were going to knock the market down against themselves.

Q Did you suggest to them in the morning they might try and sell soybean oil futures on the Chicago Board of Trade?

A They said they didn't want to do it because it might knock the market down. They wanted to get rid of the whole package. When it was clear that we were not able to do that, then I suggested to them, not the other way around, that in spite of their fears they might try and lighten up somewhat by selling some of their soybean oil on the cotton--on the Board of Trade which was still trading.

They said, "Will you do it?"

I said, "I should not be the one to do it for you because I have a large order that has been entered ahead of it."

MR. HARRIS: No further questions.

THE COURT: All right. Thank you, Mr. Anderson.

gwrf 6 3345

was employed by Merrill Lynch as manager of the Commodity Research Department.

Picking up at page 5, line 5 --

MR. O'DONNELL: Would you indicate, please, your Honor, who was doing the examining.

MR. KIRSCH: This was an examination by plaintiff.

THE COURT: By whom?

MR. KIRSCH: Plaintiff.

"Q Would you state what your job responsibility was in 1963?

"A Washington contacts on commodity developments, supervision of preparation of commodity publications, and editor of commodity opinions."

MR. KIRSCH: Turning to page 28, line 12:

"Q Do you recall whether the statistics published by the Government informed you that the percentage of contracts held by large traders on the long position was greater than that held by small traders during the second half of 1963?

"A Yes."

MR. KIRSCH: Then for the attorney for the witness or Merrill Lynch asked, do you recall, you are not being asked as to the exhibit, you are being asked

do you recall.

"THE WITNESS: I don't recall.

"Q May I ask you if you would look at the statistics showing from January through October 1963, the percentage of long contracts held by large traders and small traders, and can you tell me if that refreshes your recollection generally that this was the percentage held as you knew it in 1963?

"A No, I don't remember these percentages. As to the pattern, I do recall.

"Q Can you tell me now what the pattern was in 1963?

"A Heavy accumulation by trade interests.

"Q By large traders as opposed to small traders?

"A Yes."

MR. KIRSCH: I'm reading following it at Mr. Manning's request.

"Q Is it your recollection that heavy accumulation by large traders grew relative to the percentage held by small traders during 1963? Is that your recollection?

"A That I don't recall.

"Q Do you recall whether there was any communication at Merrill Lynch or by Merrill Lynch with others

gwr 8 "Hankin" 3347

as to what effect that pattern had upon the price movement of cottonseed oil futures?

"A I don't recall.

"Q Do you recall whether there was any communication at Merrill Lynch or by Merrill Lynch with third parties as to whether Allied represented a major factor in the pattern of the long position held by large traders?

"A Yes.

"Q Can you tell me what that discussion or communication was?

"A Within Merrill Lynch?

"Q Yes, sir, within Merrill Lynch. Okay.

"A We had reports from the trading floor that brokers believed to be acting for Allied were heavy buyers on frequent days during this period, the last half of 1963.

"Q Was there any communication from the floor as to what effect, if any, that was having on the price movement in cottonseed oil futures?

"A The floor comments were that the brokers believed to be acting for Allied were paying higher prices to acquire the contracts that they were buying.

"Q Do you recall what brokers you believed were trading for Allied on the floor during that time

period?

"A Commenzo, one or two of them, and possibly Paul Nathan.

"Q Did you have an opinion in 1963 based upon this information whether Allied was a major factor in the price movement of cottonseed oil futures during the time you were getting these reports from the floor?

"A Yes.

"Q What was that opinion?

"A These people were putting the market price up, that they were buying at higher prices. You asked what kind of an effect they were having."

MR. KIRSCH: Turning to page 45, line 6, after having some testimony read:

"Q Does that testimony refresh your recollection, Mr. Hankin, that in the summer and early fall of 1963 you communicated to Mr. Anderson about the Allied long position and about the increasing concentration in the volume of trading in cottonseed oil futures?

"A I made one comment to Mr. Anderson. It was not requested by him.

"Q When did you make that comment, if you recall?

"A In November 1963.

"Q What was that comment?

gr1 "Hankin

MR. KIRSCH: Page 76, line 3:

"Q Do you believe now that the information which you had or the rumors you had that Allied was a major exporter in oils, a major purchaser of the long position and a major trader in ex-pits of previously unknown amounts to you warranted further investigation as to whether there was a possibility of a squeeze, manipulation or corner developing on either the New York Produce Exchange or the Chicago Board of Trade?

"A I didn't think of it in those terms.

"Q Did you think it in any terms at all?

"A Yes, that if a combination of that nature indicated that a substantial part of the open interest was invested in one area, I should report it to Mr. Anderson.

"Q Why should you report it to Mr. Anderson?

"A Because Mr. Anderson handled the administrative arrangements representing Merrill Lynch with the exchanges, and anything that seemed to be an overconcentration of activity in any one area, I would call it to his attention.

"Q So you reported to Mr. Anderson because there seemed to be an overconcentration in one

gr4 "Hankin [3358]

MR. MANNING: I think we can stipulate it was November 14, 1963, your Honor.

MR. KIRSCH: Yes.

Page 90.

"Q Did you directly communicate with any customers of Merrill Lynch who traded in the futures market with regard to buying or selling or the factors which would influence their decisions?

"A I was constantly called during the year by people who would ask regarding markets. I was manager of the Market Research Department, as I testified, at that time.

"Q Were you called by anybody at Bunge Corporation?

"A I believe I might have talked with Mr. Fornari or Mr. Forti at that time during the year.

"Q Did they ever discuss with you the significance of Allied's position in cottonseed oil futures as a factor of their activity?

"A I don't recall any such conversations.

"Q Did you discuss with Mr. Fornari, at any time, Allied Corporation, do you recall?

"A I don't recall discussing Allied as such. Just the rumors that might be talked about with respect

gr5 "Hankin 3359

to Allied, that was all, but as to Allied per se, no.

"Q Do you recall why you discu-sed the rumors regarding Allied?

"A What was presumed to be Allied's activity in the market was a market influence. Therefore, you had to discuss the market with respect to Allied, too.

"Q Can you fix a time period during 1963 when you would have discussed with Mr. Fornari rumors about Allied? Was it the whole of 1963?

"A I would say the whole of 1963. Probably years before that, too.

"Q What market influence did you discuss with Mr. Fornari that Allied might have had, based on the rumors that you heard?

"A The buying that we heard of on the floor of the exchange, Cottonseed Oil Exchange, rumors that were circulating that they were buying for possible export on destinations that were unknown to the market in general."

MR. KIRSCH: Skipping to line 19 on page 92.

"Q Did you discuss Allied Corporation with anybody at Continental during 1963?

"A Possibly. Possibly with -- I think

gr6 "Hankin 3360

Mr. Stafford, at that time, but only in a very casual way.

"Q Do you recall whether, in a casual way, you discussed rumors you had heard about Allied that might affect the market?

"A I don't recall."

MR. KIRSCH: Thatis all I have, your Honor.

MR. HARRIS: Mr. Fornari, please.

H A R R Y D. F O R N A R I , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q Mr. Fornari, can you try and keep your voice up so that the people in the back and the jurors in the back can hear you?

A I will try, Mr. Harris. Is this loud enough?

Q Yes, that's fine.

A Thank you.

Q Thank you.

Mr. Fornari, how are you currently employed?

A I am a vice president of Bunge Corporation.

Q What are your current duties?

A They relate to the general management of the corporation.

Q I have noticed from time to time that you have been sitting in the back of the courtroom during this trial.

Have you attended regularly?

A Yes, sir, I have.

Q When did you start working for Bunge Corporation?

A I believe in 1952.

Q Did you become co-manager of Bunge's oil department in 1958 or 1959?

A Just about that time; yes, sir.

Q And the other co-manager was Richard Forti?

A That's correct.

Q During 1963 were you and Mr. Forti co-managers of Bunge's oil department?

A Yes, sir.

Q When did you become a vice president of Bunge?

A I believe in 1961.

Q Was Mr. Forti a vice president of Bunge

during 1963 as well?

A We were both named at the same time.

Q As I understand it, sir, and correct me if I am wrong, you and Mr. Forti were physically located next to one another in Bunge's offices during 1963?

A That's correct.

Q Will you tell us generally what was the function of Bunge's oil department during 1963?

A That is a rather broad order, but I will try.

It involved the purchase and sale of a variety of fats and oils; to some extent also on a domestic basis, but primarily for export abroad.

Q Did it involve --

A That included edible and inedible fats and oils.

Q And it included cottonseed oil and soybean oil?

A Yes, of course, those were major commodities.

Q Was trading in commodity futures in cottonseed oil and soybean oil part of the duties of the Bunge oil department?

A Well, naturally as part of the hedging activity for the cash commodities.

A I believe so, yes. I don't know that it was actually ever distributed or put in any formal way, but that is what I had prepared; yes, sir.

Q I take it, to the best of your ability, it was accurate when you prepared it?

A Yes. I had done this primarily for the purpose of having at a glance who was supposed to handle which commodity. As you can see from it, certain people were handling certain types of inedible oil, other people other types of oil. That was a general distribution of duties.

Q There's one item set forth, a box saying "Allied relations."

Do you see that, sir?

A Yes, sir.

Q What did that mean?

A Well, that meant that Mr. Groeneveld for part of his time -- as you will see, I had pencilled in names of individuals. The chart itself was typed up by my secretary. I had pencilled in Mr. Groeneveld in parenthesis, one half. In other words, half of his time could be devoted to that. He had an assistant by the name of Polakowski and he also was helping Mr. Groeneveld in this task, which involved

checking documents, looking at shipments, doing all this.

Q In other words, that part of Mr. Groeneveld's task and Mr. Polakowski's task were dealing with Allied Crude, isn't that right?

A That is correct, sir.

Q Were there any personnel in the fats and oils department -- looking at this chart, Mr. Fornari -- that spent half or a good deal of their time working for any other customer or supplier of Bunge specifically designated?

A No, sir.

Q That's because Allied was such a major customer and supplier of Bunge, isn't that right, that it had a special --

A Yes, I would say so.

Q It had a special department, so to speak?

A I wouldn't call it a special department, but there was such a volume of business with them that it did require much of the time to certain people. Rather than spread it over a lot of different people, it was thought best that Mr. Groeneveld, who was familiar with it, handle most of it or all of it.

Q Did you in 1963, sir, participate in the

elr1 Fornari-direct 3368

Q What were your duties in the fats and oils department in 1963?

A If I might correct you, Mr. Harris, in 1963 it was called the oil department.

Q I'm sorry.

A It had been changed in 1961, I believe. Prior to that it was the fats and oils department. But now it was called the oil department.

Q With that correction, can you tell me what your duties were?

A Well, the general management of the department, and I would say just about you name it and we were doing it.

Q What about Mr. Forti? What were his diets?

A The same. We were co-managers on a completely equal basis.

Q Did you sort of take the lead or emphasize one area and Mr. Forti another, or was it that you both did equal amounts of the same thing?

A I would say yes, we differentiated slightly in that respect. Mr. Forti was paying slightly more attention to the trading especially in the inedible, tallow and grease, while I was paying more attention to

the trading in oils and the general administrative and management functions of the department.

Q I take it, sir, justso there is no confusion on my part, that neither you or Mr. Forti directly traded cottonseed oil futures or soybean oil futures, is that right?

A Oh, yes. No, it might well have been the case that if one of the assistants or traders was busy I would pick up the phone and call Camp in Chicago or Jack Place in the New York Produce Exchange and ask him to buy or sell a number of futures.

Q So you were sort of jack of all trades, in that sense?

A You might say, yes.

Q Do you recall, Mr. Fornari, whether there were any guidelines in the Bunge oil department during 1963 with respect to getting approval of large, say futures transactions or transactions above a certain size?

A Not as far as guidelines are concerned. I mean, we naturally discussed each transaction, specially the larger ones. But there was no specific limit set.

I'm not quite sure that I grasped your

question.

Q No, I think you did. I think you answered the question. Were there any guidelines that you can recall as to when you or Mr.Forti would consult with Mr. Klein about particular transactions and as to when you would make up your own mind?

A Well, Mr. Harris, that has to be a matter of judgment. There was no set number of contracts or what have you. I mean, we did consult and ask approval quite often, but there was no specific number set or what have you.

Q As part of your duties in 1963, Mr. Fornari, did you keep generally familiar with market conditions in the cottonseed oil and soybean oil markets?

A In a very general way, yes.

Q I am referring now to both cash markets and futures markets.

A Again, in a general way, yes.

Q Didn't you prepare a weekly newsletter, internal newsletter for Bunge concerning the state of oils markets? I am talking about 1963 now.

A Yes, I believe I did, but that was just general trading information: the large transactions that had taken place, and very appreciable

elr4 Fornari-direct 3371

market movements. That is about the extent of it.

Q During 1963 to whom did you and Mr. Forti report, if anyone at Bunge?

A To Mr. Klein.

Q Was there any set period of time when the oils department was required during 1963 to make reports to Mr. Klein?

A No. You mean on the first of every month or every other week?

Q Yes, some kind of regular --

A No, sir. It was a constant continuous consultation and exchange of views.

Q When you did report to Mr. Klein was this in writing or would it be oral, for the most part?

A I would say that would depend on the circumstances and on the subject matter. But it could be done either way.

Q Didn't you give Mr. Klein during 1963 a weekly resume of the transactions that the oil department had engaged in in the various commodities?

A I believe that there was such a thing prepared by our contract section, but it wasn't just intended for Mr. Klein. It was a general resume of

Q It would be on the particular day, it would be, for instance, if it was in cottonseed oil it would give the net cottonseed oil position of that day?

A Yes. We are long so much cash and short so much futures for that day, yes.

Q What I am trying to find out, Mr. Fornari, is simply what information was transmitted to Mr. Klein about either your net positions or your purchases or your sales or your inventories?

A I see.

Q You don't recall, is that it?

A He may have gotten that, but I don't recall at this time. It was really an internal working took, that is all it was.

Q Mr. Fornari, do you recall a meeting that was held on November 13, 1963 in the morning at the offices of Bunge Corporation, at which you -- do you recall a meeting at which Mr. DeAngelis was present?

A Yes, sir.

Q Were you present?

A Yes, sir.

Q Do you recall who else was present?

A I believe besides Mr. DeAngelis and I, Mr. Klein, Mr. Forti, and Mr. Kenner.

Q Do you recall the subject matter of the meeting?

A Yes.

Q What was that, sir?

A Well, Mr. DeAngelis for some time had been pressing us in wanting to renew financing arrangements and obtain larger financing and he had asked Mr. Klein for a meeting so that he could preseent his case, more or less.

MR. LIMAN: Your Honor, for the record, I think that all of these internal discussions at which no other defendant was present should be understood as being so limited. I just want to preserve the record.

THE COURT: Again, I think that is clear to the jury. This has only relationship to the Bunge Corporation, and I gather Mr. Klein, at best.

MR. HARRIS: Yes, your Honor, that is correct.

Q I would like to show you, Mr. Fornari, Plaintiff's Exhibits 111 for identification and 78 and 79 for identification and ask you if particularly item 78 and 111 were the letters Mr. DeAngelis had written to Mr. Klein, that you were just referring to?

A Yes, sir, they are.

Q And you saw a copy of Exhibit 78?

elrf 6 Fornari-direct [3380]

rephrase that:

Do you recall, Mr. Fornari, from the outset of your dealing with Allied in the sense of financing arrangements who held insurance on the oil at Bayonne?

A No, I have no recollection.

Q Do you recall if there came a time when the situation changed with regard to insurance?

A I don't recall at this time. That is quite possible.

Q Do you recall that sometime in 1962 or 1963 Bunge went out and got its own insurance?

MR. FRYER: I don't think, I don't think this is relevant --

MR. HARRIS: I haven't finished the question.

A I believe yes, at some time --

Q Let me rephrase the question.

Do you recall that sometime in 1962 or '63 Bunge went out and got its own insurance on the oil that was covered in the warehouse receipts it was financing, that it was holding for collateral?

A Yes, I understand what you mean.

MR. FRYER: I don't think there is any relevance to this line.

THE COURT: Is that an objection?

MR. FRYER: Yes, it is, sir.

THE COURT: Sustained.

Q In any event, Mr. Fornari, I would like to return to the meeting of November 13th with Mr. DeAngelis.

Can you tell us as best you can recall, what was said and by whom at that meeting?

A It was a rather short meeting. I don't think it lasted more than perhaps 15, 20 minutes. And Mr. Forti and I said little, because Mr. DeAngelis wanted to present his case to Mr. Klein, and Mr. Klein listened. And there was no conclusion at the end of the meeting because I believe that Mr. Klein had already indicated in his reply to one of Mr. DeAngelis' letters that -- you know, this was November, and that is when the grain crops are moving and that is when Mr. Kelin was right in the middle of a lot of expansion in grain storage and what-not, so he said that a program such as Mr. DeAngelis wanted, which went far beyond what had been done until then, would requre a lot of study, a lot of work by him, by members of his staff, and that right now he just couldn't take the time. I believe that he pretty much repeated that at this meeting. It was an inconclusive meeting.

Q You have no recollection?

A None whatsoever.

Q Mr. Fornari, do you recall meeting with Mr. Klein, Mr. Forti and Mr. Brasmer on November 14, 1963?

A I believe that on November 14 I met with Mr. Klein and Mr. Brasmer and Mr. Forti was contacted by telephone.

Q Just for the record, can you identify MR. Brasmer?

A Yes. Mr. Brasmer is now a senior vice president of Bunge Corporation who was then and is now in charge of trading. He was at the time primarily in charge of grain trading. He is now in charge of all trading.

Q Thank you, sir.

Was it at this meeting on November 14 that Mr. Klein instructed you and Mr. Brasmer to sell about 300 to 400 contracts per day of soybean oil futures and cottonseed oil futures over the next few days?

A He did not instruct Mr. Brasmer, he instructed Mr. Forti and me.

Q Do you recall how the figure of 300 or 400 contracts per day was arrived at?

A On the basis that that would be a number which

would not upset the market. Our intention at that time was in view of the fact that it seemed most likely that there would be no buying on the part of the Soviet government of fats and oils, to hedge our long position of cash fats and oil.

Q In other words, prior to November 14 you were long in fats and oils?

A On a net basis, yes.

Q And this position was not hedged, is that what you are saying?

A Some of it was not. Part of it was, and part of it was not; particularly the tallows and lard and cocoanut oil, items which could not normally be automatically hedged.

Soybean oil you could hedge because you could buy cash and sell it future at the same time. It was almost an automatic thing, but palm oil or tallow had no comparable futures market on which to hedge.

They could, however, be protected by a hedge in one of the oils which were traded in the futures market such as cottonseed oil or soybean oil, and there is of course a relationship between all these commodities.

Q In any event, they weren't so hedged prior to the November 14th in full?

A That is correct.

Q Was there a discussion on November 14th with Mr. Klein present as to whether or not Bunge should sell three or four hundred contracts a day to hedge its fats and oils position?

A I don't remember the exact details. I believe it was predicated on the total quantity which we were long and Mr. Klein indicated, well, hedge it by selling a few hundred -- I'm not sure whether he said three or four hundred or a few hundred contracts each day, and possibly even go a little on the short side if the market was favorably inclined.

Q I take it by that last remark you meant if the market was falling?

A Well, when you are selling you expect or hope that the market will go down.

Q And indeed, the market did go down after November 14th, did it not?

A Well, only slightly at the beginning.

Q But in the next few days it went down?

A Because of known events, yes.

Q At the meeting of November 14th was there any

discussion as you can recall now concerning what Mr. Klein had been informed by Mr. Anderson on November 13th?

A No, sir.

Q Was there any discussion about what all of you had veen informed by Mr. DeAngelis as to his position on November 13th?

MR. MINNEROP: Your Honor, may we ask for the usual limiting instructions at this point, that these conversations obviously only pertain to Mr. Klein and Bunge?

THE COURT: I think frankly that the -- I haven't really been meticulous in that, because if I started doing it, and I think the jury understands it very clearly now without repeating it; we have gone together for a long time. I think they are beginning to understand how these things work. I'm sure they do.

MR. MINNEROP: Thank you.

THE COURT: In any event, you understand how this conversation goes, they are limited to Bunge and Klein.

Q I don't know if you got my question, Mr. Fornari?

A Oh, yes, I got your question. The answer is no, we were discussing Bunge's own position and what we

should do to protect it.

Q Where was Mr. Forti, you indicated that he was contacted by telephone?

A Yes, sir. I believe he had gone to Chicago on some prior arranged business.

Q Did Mr. Klein give any instructions to Mr. Forti over the telephone, at that meeting?

A I think that Mr. Forti was called in order to get his opinion whether he agreed with what Mr. Klein and Mr. Brasmer and I were discussing, that in view of the expected falling to of the negotiations on exports to Russia, it would be a wise thing to hedge our cash position, and possible even go short a little. And Mr. Forti agreed.

Q Mr. Fornari, isn't it a fact that pursuant to Mr. Klein's instructions Bunge started to sell short in cottonseed oil and soybean oil futures the next day, November 15th?

A Well, may I qualify what you just said? You see, if you sell short that means you have nothing to begin with and you are going short. But if you have a long position which you want to protect, then you are not selling short, you are hedging; and you do that by selling. Once you have reached the limit of your

long position which you have now hedged in total, you are then selling short whatever additionally you may sell. And the answer to your question is yes, we did begin, I believe, the next day, the 15th, to sell some contracts. And if my memory serves me right, also we began selling in sort of equal quantity in cottonseed oil and soybean oil, but since the cottonseed oil market was very thin, there were fewer buyers and the Chicago soybean oil market was a much broder market which could absorb without any sensible effect, a larger quantity of hedges, I think we after the first day or perhaps the second day, we only sold soybean oil and no more cottonseed oil.

I think that that is all in our records there.

Q Let me show you Plaintiff's Exhibit 151 for identification, Mr. Fornari, and ask you if that refreshes your recollection that from November -- that on November 15, 1963 Bunge sold 115 cottonseed oil futures contracts?

A It doesn't refresh my recollection, but I have no doubt that if that is what the records show, that is the correct figure. I have no recollection now of how many. I know the fact that we were hedging our position and selling cottonseed oil and soybean oil, yes. Whether that is an accurate figure, I don't know. I don't know

who prepared this, but quite possibly so.

Q Let me show you Plaintiff's Exhibit 116 for identification and see if you can identify that document, sir?

A Yes, sir, I certainly can.

Q What is it?

A That is a -- you might call a comparative table which I prepared, this is in my handwriting, and it shows the longs and shorts position of Bunge and what was done from day to day from the close on November 14th to the close on November 19th.

Q Do you know when you prepared that?

A I don't remember now. It was subsequent to the bankruptcy of Allied and all that, yes. It definitely was after that. Might have been '64, '65, I don't know.

Q Does this indicate to you what your position was in cottonseed oil futures on November 14th, either at the beginning of November 14th or at the end of November 14th, sir?

A Yes, it is all here. I mean, it shows what our position was at the close of November 14th where we had already some of our hedges in from before this meeting with Mr. Klein and Mr. Forti. What we did in the

subsequent days --

Q Let's just address ourselves to cottonseed oil futures contracts on the New York Produce Exchange, sir.

A Very well, sir.

Q What was the position at the close of business on November 14th that Bunge held in cottonseed oil futures contracts?

A The position we held at the close of November 14th must be taken into account with our cash long --

Q I'm sorry, I'm asking you a question.

A Yes, sir.

Q Can you tell us how many contracts you had?

A It is listed here. We were short 122 contracts of December cottonseed oil and 57 contracts of March cottonseed oil.

Q And that is 180 -- I didn't hear that number.

A 122 plus 57.

Q That is 179, is that correct?

A Your arithmetic is correct.

Q You were short 179 cottonseed oil futures contracts at the close of business on November 14th?

A That is correct.

Q Does it further indicate what your position was in cottonseed oil futures again at the close of business on November 15th?

A It shows that during November 15th we sold 53 Marchs and 62 Mays.

Q For a total of 115, is that right?

A Whatever your arithmetic shows.

Q Does it then tell you what the total position is at the close of business on November 15th?

A Not in number of contracts. This is a cumulative sheet I made in the sense of total contracts.

Q Can we agree, Mr. Fornari, that if you add the 179 net short position on the close of the 14th to the 115 additional short position taken on the 15th, you come out with a net short position at the close of business on November 15th of 294 contracts?

MR. FRYER: I object to the words net short, your Honor.

Q Was that the actual number of short contracts you held?

A That was the actual number of short contracts

we held. I'm not doubting your arithmetic, but it was not a net short position.

Q Did Bunge hold for its own account long contracts in cottonseed oil futures on November 15th?

A We held for our oan account long cash cottonseed oil.

Q Mr. Fornari, I would like just to ask you to bear with me for a minute. I'm talking about futures now on the New York Produce Exchange.

A No, we had no long futures.

Q Your position then on the close of business was that you held 294 contracts all of which were short?

A Yes, sir.

Q Can you tell from that exhibit whether Bunge did any trading on the New York Produce Exchange in cottonseed oil futures on November 18th?

A Yes, sir.

Q What trading was done, sir?

A We sold an additional 84 Marchs and an additional 16 Mays.

Q That comes out even by my poor mathematics to around 100.

A It appears to be correct.

Q Would it be correct then to say that at

the close of business on November 18th Bunge held 394 short contracts on the New York Produce Exchange?

A Quite obviously.

Q Did Bunge do any trading on the New York Produce Exchange on November 19th, sir?

A Yes, sir.

Q What trading did you do on November 19th?

A We sold 37 Marchs and one May.

Q That brought you up at the close on the evening of November 19th with a short position of 434 contracts?

A Whatever the total is, yes, sir.

Q Sir, during the period November 14th to November 19, 1963 when the price of cottonseed oil futures contracts on the New York Produce Exchange was falling, do you recall that the price of soybean oil futures on the Chicago Board of Trade also was falling?

A No, I don't recall, but I would assume that there would be a parallel movement.

Q That is because there generally is a parallel movement between the soybean oil futures prices and cottonseed oil futures prices; isn't that correct?

A Generally, yes.

Q Does Exhibit 116 for identification

indicate to you Bunge's trading in soybean oil futures contracts during the period November 14th to November 19th, 1963, sir?

A Yes, sir, it does.

Q Looking at Exhibit 116, can you tell us what Bunge's position was in soybean oil futures contracts traded on the Chicago Board of Trade as of the close of business on November 14, 1963?

A Yes, sir.

Q What was that, sir?

A As part of our hedges we were short 350 soybean oil December and 90 soybean oil January.

Q For a total of 440, isn't that right?

A I don't have a piece of paper in my hand. I will accept your arithmetic.

Q Does Exhibit 116 indicate to you whether Bunge did any trading in soybean oil futures contracts on November 15th?

A Yes, sir, it does.

Q What trading did Bunge engage in in soybean oil futures contracts on November 15th?

A We sold 315 March futures.

Q Was that all?

A That is all we sold.

MR. O'DONNELL: I object just on the grounds of relevance as to what Bunge was doing on the Chicago Board of Trade on soybean oil futures.

THE COURT: It is overruled.

Q So that at the close of business on November 15th, Friday night, 1963, Bunge's position in soybean oil futures was short 755 contracts?

A Whatever the total is.

Q Does Exhibit 116 indicate whether Bunge did any trading on Monday, November 18, 1963?

A Yes, sir, it does.

Q What trading did Bunge engage in in soybean oil futures contracts on that day?

A We sold further 232 Marchs and 63 Mays.

Q Does that indicate to you that at the close of business on the 18th Bunge held a short position of 1050 soybean oil futures contracts?

A If that is what the figure shows.

Q Did Bunge engage in any trading of soybean oil futures contracts on November 19th, sir?

A Yes, sir.

Q What trading did it engage in on that day?

A We sold 554 Marchs and 40 Mays.

Q Does that bring you to a position in soybean

oil futures contracts at the close of business on November 19th of a short position of 1,644?

A If that is what the figures show.

Q Thank you, sir.

Isn't it a fact, sir, that Bunge increased its sles of soybean oil futures and cottonseed oil futures based on the fact that the market was declining during that period that we have just been referring to?

A I wouldn't say that.

Q I didn't hear you. You would or you would not?

A I said I would not say that, at least not in the initial stage.

I would say when we first sold on the 15th and on the 18th, we were simply continuing to fulfill the instructions we had received to hedge our position and eventually go a little short, and that then seeing that the market was going in the right direction, we did continue to sell.

As I mentioned before, we didn't sell cottonseed oil because it was a very thin market and we sold more soybean oil instead. I think the figures you had me read off show that.

Q The figures that we went through did show that Bunge sold a couple of hundred cottonseed oil

contracts during that period; isn't that right?

A I believe so. That is what it was.

Q The closeout of the market in the New York Produce Exchange and the settlement of contracts on November 20th, 1963, Mr. Fornari, isn't it correct that Bunge received more for those contracts than it paid for?

MR. FRYER: I object. I don't think that is an understandable question.

THE COURT: I didn't understand it either.

Q I will back up.

When the contracts were settled out -- you recall that, don't you, Mr. Fornari?

A Yes.

Q -- did Bunge receive a price for its contracts?

A Whatever the settlement price was established, that is the price at which our contracts were closed out.

Q Right. What I'm trying to get at is whether you got back more money on the settlement than you paid out.

A We didn't pay out anything. We hadn't -- this is not a cash commodity you are talking about. We hadn't bought these contracts. We didn't have these contracts in our pocket. We had put up the required margin, whatever it was. It isn't a question of buying and selling. I'm sorry, I don't quite understand what you are driving at.

Q Okay. Fair enough.

Do you recall in October 1963, Mr. Fornari, Bunge acting as a broker in futures transactions for Allied Crude?

A Yes, I believe so.

Q Do you recall in what context Bunge acted as a broker for Allied? Was it in connection with any other transaction?

A Well, I believe, if you are talking of October, you must be referring to a position we were carrying as brokers for Allied of 2500 soybean oil contracts.

Q Yes, sir.

That was the first time --

A Yes, that was the first time.

Q -- that you had carried contracts for Allied as a broker?

A That is right, yes.

Q Do you recall the circumstances that led to your doing that on that occasion?

A Well, I believe that that was as an aftermath of a purchase and sale transaction between Bunge and Allied covering some registered warehouse receipts of the Chicago Board of Trade.

Q Did there come a time also when Bunge carried some cottonseed oil contracts for Allied?

A Unfortunately, yes.

Q That was in November 1963; was it not?

A November 13, I believe.

Q That was a thousand contracts?

A That is correct.

Q Isn't it also correct that these 2500 soybean oil contracts were held by Merrill Lynch in Bunge's customers account?

A I don't believe that is quit- correct. I believe that the 1000 cottonseed oil were held by Merrill Lynch in Bunge's customers account.

As to the 2500 contracts, I believe they

A Yes, sir.

Q Do you recall that there was a margin call on Allied in the amount of approximately $500,000 on November 15?

A I don't remember the amount, but I do know that there was a substantial margin call; yes, sir.

Q Do you further remember that Allied was not able to meet this margin call?

A Well, I believe that margin call was made on the afternoon of November 15, which meant that Allied had until November 18 to put up that margin, and when Allied was called they said, yes, you'll have it Monday morning.

Since it hadn't come on Monday morning, the 18th, I believe I myself called Mr. DeAngelis and said, "Don't worry, you'll have it there."

I said, "Please have it here in a certified check by 1 o'clock," I believe, I think.

He said, "Yes, yes, it will be there."

But it wasn't.

So that the next day he had failed to put up the margin and his position had to be liquidated.

Q Did you speak to Mr. DeAngelis on Friday, November 15 regarding this margin call?

soybean oil futures on the Chicago Board of Trade?

A Well, the two things really are unrelated. I believe that we were doing our selling in the morning and that unless I am mistaken there was a time limit, the Allied position could not be liquidated until after 12 or after 1, I believe, I'm not quite sure. But one thing really had nothing to do with the other.

Q In other words, the Allied contracts were sold after the contracts we talked about before that Bunge was selling for its own account were sold?

A Whatever the chronology was, I don't know. I don't remember.

Q Mr. Fornari, please describe for us in general terms the types of financing arrangements which existed between Bunge Corporation and Allied Crude during the year 1963.

A One type would be, you might call railroad bill of lading financing. Allied might have made a purchase from an oil crusher of a certain number of tank cars of soybean oil or cottonseed oil, and the oil would be shipped to Bayonne, and once it had been shipped the railroad bill of lading would be presented to Allied for payment. This would be an ordinary

bill of lading. Allied at times would ask us to pay the supplier for these ordinary bills of lading, hold these ordinary bills of lading and then they would redeem them, you might say, or they would buy them back from us as they needed the actual oil. That was one type of financing.

In other words, we had paid for the goods, we were holding the goods, and as Allied needed oil we would release the railroad bills of lading to them, against payment, of course. That was one type of financing.

Q On that type of financing I presume Allied paid you interest on the monies that you were advancing for them?

A Well, I would expect so because we were paying interest to the bank ourselves. Yes, I would expect so. 6, 7 per cent, whatever the agreed upon rate of interest was between Bunge and Allied.

Q Do you recall whether they were paying you anything else in connection with those?

A Yes, I would say in all likelihood they would be paying us a dollar a ton which might be $27 a car or $54 a car for the handling of this. We do have an overhead of rent, salaries, etc., at

Bunge Corporation which has somehow to be covered.

(Continued on next page)

Q Who paid for things like insurance or storage charges, and that sort of thing on that financing?

A Those would be costs, not costs that wouldn't be for us. That would be paid by Allied.

Q Can you go on and tell us about some of the other kind of financing?

A I believe there would be straight loans collateralized by field warehouse receipts of soybean oil. Those would be straight loans for 30 days or 60 days with a promissory note, to the extent of possibly 80 per cent of the market value of the oil represented by the field warehouse receipt for the oil.

Q And there would be interest charged on those loans?

A Quite obviously.

Q Would there be any other charges on those, in connection with those loans that Allied would pay?

A There might be a handling charge, yes. In some cases, yes, in some cases no; I don't recall. But there might be.

Q Who was paying the storage charges on the oil represented by those warehouse receipts?

A Allied, obviously.

Q Allied paid the insurance on the oil too, did

they not?

A I would assume so.

Q Were there any other types of financing, sir?

A Qua financing, I don't think so.

Q Do you recall something called --

A I beg your pardon. It just came to mind. You were asking me about the different types of financing. There might be one additional type of financing, that would be advances against purchases. In other words, if we had purchased a certain quantity of oil for future shipment to fulfill an export contract we might have, we might advance to Allied a part of the purchase price, again collateralized by a field warehouse receipt covering either the identical product or a similar product.

Then when the actual shipment was made, Allied would give us an invoice for the goods they had actually shipped and whatever we had advanced would be offset against that and we would pay them the balance.

I'm sorry, I didn't want to leave that out.

Q When you say advances against purchases, you are referring to purchases made by Bunge from Allied?

A Yes.

Q Do you also recall something known as the

that is going to be served by having this document in evidence. I think you can ask him about it. He has admitted one of them, in any event; and the other items that you want brought out, you can ask him questions.

MR. HARRIS: Can I offer it just as to paragraph E, your Honor, and not the rest, but I'm not interested in those.

THE COURT: Can't you ask him a question to bring that out?

MR. HARRIS: Okay.

THE COURT: He has already indicated part of it, he has already indicated to you the part of it that is in there.

MR. HARRIS: I just think it would be quicker.

Q Mr. Fornari, do you recall whether or not you informed Mr. Klein during October, 1962 that Bunge could not hope to compete with the processors and refiners who were in the export field were it not for the fact that you could make advantageous arrangements with Allied Crude?

A Yes, sir, we did.

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Q Did you further indicate to Mr. Klein at that time that it would probably be easier for Allied to find other financial backers than it would be for Bunge to find other sources of supply?

A Yes, sir, we did.

Q Did you further suggest to Mr. Klein that it would be in Bunge's interest to make Allied more and more dependent upon you?

A Yes, sir.

Q Thank you, sir.

Mr. Fornari, you knew in 1963, did you not, that Mr. DeAngelis had been either president or a principal stockholder of Gobel which had gone bankrupt?

A Yes, sir.

Q Did you know during 1963 whether or not Mr. DeAngelis had been involved in disputes with the United States Government involving export shipments?

A I knew all the details of it.

Q Did you know about Mr. DeAngelis' problems with the United States Government involving a school lunch program that had taken place earlier?

A School lunch program, no.

Q Did you know during 1963 that Mr. DeAngelis had been temporarily suspended from the Chicago Board

(In open court; jury present)

DIRECT EXAMINATION CONTINUED

BY MR. HARRIS:

Q Mr. Fornari, can you describe in general terms from Bunge's point of view how these registered warehouse receipt ex-pit transactions worked that you engaged inwith Allied in 1963?

A Yes, Mr. Harris, I'll be glad to.

What would be involved would be this: Allied might be long a certain number of registered warehouse receipts on the New York Produce Exchange or theChicago Board of Trade each representing respectively one tank car of cottonseed oil or of soybean oil, or in a similar situation Allied might be long futures and about to be receiving delivery on such registered warehouse receipts as a result of there being long oil.

In either case the time would come when Allied would be either the holder or the receiver of a registered warehouse receipt for which it would have, according to the rules of the two exchanges, to pay the full value. In other words, 60,000 pounds of oil at 10 cents a pound, $6000; at 15 cents a pound, $7500, what have you.

This was part of their inventory which they wanted to use for export sales.

There might be times when they did not need all that inventory at once but still in anticipation of future export sales they did want to continue to carry this inventory, to be long that quantity of oil.

Now, if they could do that by being long futures rather than actual oil, they would not have to have the full value of $6000, for argument sake, invested but they could do that with only $600 in margin.

In a case like that they would sell to us the registered warehouse receipt and we, in order to keep it hedged, would put ourselves short the equivalent quantity of oil in a distant month.

They, in turn, in order to continue to be long having divested themselves of the cash oil represented by the receipt which they were selling to us, would put themselves long in the futures market.

So that the net result would be that they would continue to be long oil in a distant position with less of a monetary investment, and Bunge would have bought oil, but have it perfectly hedged.

That would be such a transaction.

Q The futures part of that transaction was done

ex-pit; isn't that right?

A Yes, it would have to be in order to be accomplished.

First of all, it was part of the rules that a transaction involved -- involving cash commodities could be done outside of the pit and, secondly, when you are talking of hundreds and sometimes thousands of contracts, if you attempt to do that in the pit, you will have all kinds of different prices. You will be influencing the prices up or down and you won't be able to fix the exact value of this oil. That is why the ex-pit rule is provided.

Q Isn't it correct that in almost every case when one of these transactions was entered into in 1963, there came a time when Allied took back the receipts from Bunge?

A I would say that in almost all cases at some future time Allied asked to repurchase these registered warehouse receipts from us and we agreed, of course, and at that time, in fact, there was a reassessment of what the storage, interest charges had been to carry to the delivery date, and Allied was credited with the unused portion of those charges.

Q In each of those transactions isn't it correct that Bunge received -- the price formulation there was an interest calculation that Bunge received.

A Mr. Harris, I don't know whether I have managed to convey clearly the structure of these transactions. Here was a purchase by Bunge of a registered warehouse receipt, a piece of paper representing 60,000 pounds of oil today, October 7.

If I had that oil sold in the futures market on December, the first day I can go and tender to the exchange that oil is, I believe, the first of December, perhaps. So I will have paid today $6000 the first of December.

For this month and 20 days or whatever it is, it's obviously money costs money, there is an interest charge, and I believe in the case of these registered warhouse receipts the interest was purposely kept low. I believe it was 5 and a half per cent rather than 7 per cent as it was on loans. Because these were not loans.

Q So that Allied did pay in the figuring out of the price, interest to Bunge?

A Yes. I mean, Allied reimbursed Bunge for

the interest that Bunge was laying out.

Q In addition did Allied give Bunge or pay to Bunge something like $2 a ton of margin or profit?

A I believe it was a 9 point margin agreed on, yes.

Q In addition to that, isn't it correct that Allied paid all the brokerage commissions involved in the ex-pit trades?

A That was not money coming to Bunge, that was the brokerage that went to the broker.

Q But did Allied pay it?

A Yes, of course. It was all part of the calculation. So was the storage.

Because again, this piece of paper that I would get today, when the time came to redeliver it, the warehouseman who had been holding this oil in his tanks wants to get paid for the storage. But of course the warehouse receipt in December is presumably worth more than it is today because of all these accrured carrying charges.

Normally a distant month goes for a higher value than the current month exactly because of the carrying charges.

Q I believe you indicated if Allied took back

MR. HARRIS: What I was trying to get at here is not what Bunge's profits were but whether Mr. Fornari has any idea how much it was costing Allied to engage in this type of transaction.

THE COURT: What difference does it make? The question is what kind of profits they made on the subject. If you wanted to establish how much it cost Allied, get somebody from Allied to do that. How is he supposed to know that?

Q Mr. Fornari, was it your understanding in 1963 that one of the purposes why Allied wanted to engage in this type of transaction with Bunge was to support the market price of soybean oil?

A I don't think I gave it any thought.

Q Did you ever discuss that subject with Mr. Forti or --

MR. O'DONNELL: I object to this, your Honor. This has to be with soybean oil, as I heard the question, not cottonseed oil.

THE COURT: Is that what the question is?

MR. HARRIS: The question is soybean oil, but I can --

THE COURT: Then theobjection is sustained.

MR. LIMAN: Your Honor, it is clear, isn't

it, that whatever his testimony is here relates to Bunge, possibly Klein if he disucssed it with him, but not to any of the rest of us.

MR. HARRIS: I would stipulate to that, your Honor.

THE COURT: It is very clear. I think every one of the jurors understands that, Mr. Liman. But I can understand your rising to make sure they do.

MR. LIMAN: I heard an objection from somebody else, that is why. It just overwhelmed me.

MR. O'DONNELL: Sorry to be objectionable.

Q I take it you didnot discuss with anybody from Allied during 1963 whether or not their objective in these transactions was to support or maintain the price of cottonseed oil futures?

A No, sir.

Q Do you ever recall Mr. Forti telling you that that was his understanding of why Allied was entering into these transactions?

A No.

Q Were there times during 1963, Mr. Fornari, in connection with one of these transactions weare referring to when Allied asked Bunge to move the oil forward, in other words, roll the position forward to a

MR. HARRIS: This is a short memorandum, your Honor. I will read it to the jury. I will have to refer to Exhibit 78 because it refers to Exhibit 78 which is in evidence.

(Mr. Harris read from Plaintiff's Exhibits 77 and 78 in evidence to the jury.)

Q Do you recall, Mr. Fornari, whether there were any limits set by Mr. Klein or anyone else at Bunge from time to time during 1962 and 1963 as to the total amount of financing that would be extended to Allied?

A Well, there again the word financing. There were limits set to the amount of loans and there were limits set to the amount of regular bill of lading financing. There were never limits set to the quantity or number of registered warehouse receipt transactions.

Q That is because on registered warehouse receipt transactions you were 100 per cent protected by the hedge; isn't that right?

A That is correct.

Q Can you tell us as best you recall what the limits were that you referred to on loans?

A I have no precise recollection. I have somewhere in the back of my mind that it was five million dollars on loans and one or two million dollars on

regular bill of lading financing. Don't hold me to it. It might be a little more, a little less. I have these figures somewhere in the back of my mind.

Q Was the limit a limit that was constant during 1962 and 1063 or were there changes in the limit?

A You are referring to '62 and '63?

Q Yes, sir.

A Now you are taking me too far back. I think there were changes, yes. I believe in '62 we were even financing at sometimes higher amounts than in '63, where we were donw to very little, and then we were up again quite a bit. At the end I thing we were out some 20 million dollars.

Q Do you recall that there were times in 1962 when the loans to Allied equalled 20 million dollars or 30 million dollars?

A No, that sounds a little too much. I don't think so.

Q Do you recall a time in tne spring of 1963 when the outstanding loans to Allied were reduced to zero?

A Almost, yes. That I remember. I said a moment ago early in '62 it had gone down quite a bit.

Q Do you recall, Mr. Fornari, at any time

gr1 Fornari-direct [3451]

Q Mr. Fornari, looking at Plaintiff's Exhibit 120 for identification, can you tell us what the cumulative totals of the loans advanced by Bunge to Allied were for the years 1960 to 1963, taking each year separately, sir.

A Yes, sir. Shall I read from this?

Q Yes, please.

A All right. In the year 1960 it was a total of 14 million -- do you want the whole thing to the decimal?

Q Yes.

A 14,046,017.98.

THE COURT: You don't really need that. We can get the 14 million and then the rest of them. It doesn't make any difference whether it's five cents or so forth. 14 million I think is the important thing. Then go to the next one. If it's over whatever it is, indicate that.

A I will round it out to the nearest hundred.

In 1961 it was a total cumulative sum of 78,495,000.

In 1962, 221,702,000.

In 1963, 110,467,000.

Q Thank you, Mr. Fornari.

statement, do you not?

A I believe so.

Q That financial statement is sent to the stockholders of Bunge?

A I have no idea.

Q In any event, was this time when the loan to Allied was reduced, did that coincide with the time when the annual financial statement was being prepared?

A It may very well have, I don't know. It may have.

Q Do you recall, Mr. Fornari, having a meeting with a Mr. Ray Ioanes in the summer of 1963?

A Yes, sir.

Q Who was he, sir?

A I believe Mr. Ioanes was then the administrator of the foreign agricultural service of the United States Department of Agriculture.

Q That was the office that administered, among other things, the PL480 program, was it not?

A Yes, sir.

Q Did the subject of financing Mr. DeAngelis come up a t the meeting with Mr. Ioanes?

MR. FRYER: Your Honor, I object. I don't think there is any relevance to this line.

elr3 Fornari-direct 3459

MR. LIMAN: Also hearsay as to everybody else.

THE COURT: It is hearsay. I don't see where that is relevant either. Objection sustained.

MR. HARRIS: May I approach the bench to tell you why I am asking the question, your Honor? I can appreciate that this is a new area.

THE COURT: No, you may not.

Q Did you ever receive any warnings during 1963, Mr. Fornari, from any official of the United States Government about continuing to do business with Mr. DeAngelis?

MR. FRYER: Your Honor, I object on the same ground.

THE COURT: I am really struggling in my own mind to see what purpose that is going to serve, Mr. Harris. I really can't see that at all. You have got in the record, it seems to me, the transactions, etc. Whether or not they received warnings, from the government or from anybody else, I don't understand what difference it makes. The objection is sustained.

MR. HARRIS: May I make an offer of proof on what I'd like to propose?

in ex-pit transactions were required to submit certain information concerning the cash side of the transaction if it was an ex-pit involving an exchange of futures for cash?

A No, I don't recall, but if that is what the rule says, I'm sure that is what it is.

Q During 1963 in connection with these warehouse receipt transactions with Allied Bunge engaged in ex-pit transactions with Allied; isn't that correct?

A I have so testified.

Q And Bunge did so through Merrill Lynch as its clearing member, is that right?

A In some cases through Merrill Lynch and in other cases through other clearing members. I think in Chicago we may have acted ourselves as clearing members.

Q I'm talking about the New York Produce Exchange now.

A Yes. Sorry, I misunderstood you. Yes, in the New York Exchange we only used Merrill Lynch as your broker.

Q Did you know that in connection with these ex-pit transactions in New York Merrill Lynch submitted ex-pit letters describing the transaction to the Produce Exchange?

A Not that I can recall, and I don't believe I did.

Q And Mr. Klein you knew was on the Board of Managers of the Produce Exchange?

A Yes, sir.

Q Did you ever have any discussions during 1963 with Mr. Klein about what topics were discussed at the Board of Managers?

A No, sir --

Q Of the Produce Exchange?

A No, sir.

Q Never?

A No, sir.

THE COURT: I think we will suspend until tomorrow morning at 10:00. Ladies and gentlemen and counsel I know you are anxious to know whether or not we are going to sit on Monday, and quite frankly I had at first determined that we would, but after thinking about it, I decided that maybe the extra day would do us all some good, so we will observe the holiday. We will resume tomorrow morning at 10:00 o'clock.

(Jury left courtroom.)

THE COURT: I will give you your opportunity to make your offer.

elrf 7 3470

MR. HARRIS: Thank you, your Honor. What I wanted to bring out through the witness, your Honor, is that he had a conversation with this Mr. Ioanes, who is the administrator of the Public Law 480 Program for the Government in July 1963 which he then reported to Mr. Klein during which conversation Mr. Ioanes indicated that he was quite disturbed at the way -- perhaps the easiest thing to do, rather than me stating it, it is summed up in a memorandum, and we could mark the memo.

THE COURT: Let me see it.

(Handing.)

MR. LIMAN: Has that been premarked?

MR. HARRIS: I thought it was.

MR. LIMAN: What is the date on it?

MR. HARRIS: July 18th.

(Pause.)

MR. FRYER: I think it is 84.

MR. HARRIS: Mr. Fryer is right, your Honor, it is Plaintiff's Exhibit 84 for identification.

THE COURR: What part of this memorandum do you regard as being of value to you?

MR. HARRIS: The fact that Continental wouldn't finance Allied, I don't gather that you want that in.

elrf 8

MR. LIMAN: Itis also shear hearsay.

THE COURT: What do you have here that is of value to you, is what I would really like to know?

MR. HARRIS: Your Honor, I think the fact that the Government is expressing concern about what is going on in the program --

THE COURT: About what? In any event, obviously you can go into it, so mark it for the record.

MR. HARRIS: There was a preceding meeting with Mr. Ioanes and Mr. Klein and others, not Mr. Fornari, which have been premarked, the memorandums, Plaintiff's Exhibits 87, 88 and 89, and I was going to ask Mr. Fornari if he was aware of the contents of the previous meetings, and I think he was, and I think that is why he later met with Mr. Ioanes in July, two months later.

THE COURT: Is that it?

MR. HARRIS: Yes, sir.

THE COURT: All right. We will adjourn until tomrrow morning.

(Adjourned to October 9, 1975, 10:00 a.m.)

Q Let me show you Plaintiff's Exhibit 252 for identificationand see if you recognize that document, sir?

A Yes, sir, I do.

Q What is it?

A It is a memorandum dated October 9, 1963 addressed to Mr. W. C. Klein from R. D. Forti and H. D. Fornari.

MR. HARRIS: Your Honor, I would like to offer Exhibit 252 for identification with respect to Defendants Klein and Bunge.

MR. FRYER: I object, your Honor; relevance.

THE COURT: All right. It is received.

(Plaintiff's Exhibit 252 for identification received in evidence.)

Q I would like to ask you, you said that these were not audited financial statements.

Just for the record and for the benefit of those of us who may not be accountants, can you explain what the difference is between an audited financial statement and an unaudited --

THE COURT: I'm not going to have him explain that. If you want that explained, you wait for your accountant to do it.

MR. HARRIS: May I read Exhibit 252 to the

elr2 Fornari-cross 3505

fututes contracts forAllied during 1963; do you recall that?

A Yes, sir.

Q Do you recall if Bunge lost any money as a result of acting as Allied's broker?

A Yes, sir. When we had to liquidate the position in the soybean oil and when the contracts were settled by the New York Produce Exchange for the cottonseed oil, there were very substantial losses, I forget the amount, three or four million dollars which should have recouped from our customer, but since our customer was bankrupt, that was our loss.

Q Do you recall how much your losses were.

THE COURT: He just said three or four million dollars.

A Not precisely, Mr. Fryer. About three or four million, I don't remember exactly.

MR. FRYER: May I have a moment, your Honor.

(Pause)

Q Just one last point. Is it stipulated, Mr. Harris, that Bunge was not a member o the New York Praduce Exchange Clearing Association?

MR. HARRIS: Yes, it is, your Honor.

elrf 2 "For*i" 3512

specific instructions."

Page 51, line 22, where there is a question, and then there is colloquy, and we will resume at page 53, line 2.

MR. FRYER: Your Honor, I object on relevance grounds. This has to do with non-fungible storage. I don't think that has any relevance to this case.

THE COURT: 51, line 22?

MR. BERNFELD: The question, your Honor, is at page 51, lines 22 and 23. Then there is colloquy and a clarification at the top of page 23; the witness responds.

THE COURT: I don't see where this has any relevance to this case.

MR. BERNFELD: Your Honor, we believe that the relevance is that during 1962 and 1963 Bunge progessively was taking tighter and tighter security precautions with respect to Allied. The gain by having non-numbered, unregistered warehouse receipts and then it had numbered receipts and then it had non-fungible tanks. I think this is very relevant, your Honor.

MR. FRYER: I object, your Honor. He is getting this in by his own testimony.

THE COURT: The objection is sustained.

elrf 4 "Forti" 3514

I would say represented really the most important part of my conversations with Mr. Klein, the overall extent of the commitments."

Your Honor, the next item is at page 75, line 11.

MR. FRYER: I have the same objection, your Honor.

THE COURT: Mr. Bernfeld, if I am not mistaken, and Mr. Fryer, I recall Mr. Fornari testifying that in regard to the warehouse receipts, that they, Bunge and he, began to identify those in terms of the number and where they were located, et cetera, in regard to any transactions with Allied; isn't that correct?

MR. FRYER: I think it is, your Honor.

THE COURT: That is not the record. So what is the point?

MR. BERNFELD: The numbering aspect was brought out, your Honor.

THE COURT: He also indicated they had an inspection to be sure that the tank -- the receipt that was supposed to cover the tank, the tank in fact had the oil it was supposed to have.

MR. BERNFELD: That entry goes to page 80, line 14. The next item is page 88, line 22 which is

gwrf 5 "Forti" 3523

is page 162, line 21.

162,line 21 through page 183, line 11:

THE COURT: That is where you are going to stop?

MR. BERNFELD: I believe your Honor has-sustained an objection to a related passage, so I just give those lines for the record, and similarly lines 15 through 18 on page 163.

THE COURT: All right. That means you are not reading them; is that what you are saying?

MR. BERNFELD: I would like to read it. It relates to that other passage.

THE COURT: All right.

MR. BERNFELD: Page 164, line 25:

"Q Are we talking about tank numbers now or are we talking about surveys?

"A Surveys. When I refer --

"Q I asked you about tank numbers.

"A Tank numbers. I would say that most likely -- I'm not one hundred per cent certain, but I would say that most likely this was an idea that originated with Groeneveld because he did stress how much easier it would be to have an inventory and a survey made if he knew in which specific tanks our oul was stored."

elr6 "Forti [3538]

at the rate of about $2 million a day, and at the same time it would get paid back $5 million. Was there any discussion which you had with Mr. DeAngelis as to why it was that he wanted you to be loaning money with one hand and geting it paid back with the other?

"A There were no specific questions asked.

"Q Did this seem peculiar to you at the time?

"A It did not seem strange. I think similar arrangements had been made before.

"Q You did not ask him why he wanted to do it this way?

"A Not specifically, no."

The next entry is page 196, line 21:

"Q You referred yesterday to a guarantee that Mr. DeAngelis gave you with respect to new business. It is referred to in the letter of September 26th, and it is referred to in the last paragraph " --

THE COURT: We have had all that testimony, unless you are going to add something to it. Mr. DeAngelis said that he guaranteed them, gave them the guarantee and there was no risk involved. There's been plenty of testimony on that.

MR. BERNFELD: That selection concerns through page 198, line 8.

elr7 "Forti [3539]

MR. BROWN: Your Honor, I would suggest that the question and answer on page 199 might throw some light on to the use of the word guarantee here, beginning at line 7.

MR. BERNFELD: Since we haven't read the testimony, I merely gave the lines for the record, it doesn't make sense to have an explanation of something that hasn't been read.

THE COURT: What do you refer to, Mr. Brown?

MR. BROWN: I am just proposing that if Mr. Bernfeld is to read the passage that goes before that, your Honor, that it should be carried through to that extent.

MR. BERNFELD: I do propose to read it, but your Honor has indicated otherwise.

THE COURT: It's in the record. Proceed. What is the next one?

MR. BERNFELD: Page 199, line 7.

THE COURT: Same thing. Let's go to the next excerpt.

MR. BERNFELD: That carried through 200, line 13. Next, page 211, line 24:

"Q Who is Mr. Oislander?

elr8 "Forti 3540

"A Mr. Oislander is the publisher of the Trade News Service, which is the trade sheet which is published in New York.

"Q You know Mr. Oislander, do you not?

"A Yes."

We go next to page 246, line 6.

"Q Do you recall any discussion at or about this time -- that is, July and August 1962 -- with anvone at Bunge regarding the question of whether Allied's insurance policy, which at that time covered these goods, covered against fraudulent acts on the part of Allied or misfeasance on the part of the employees of the various storage companies?"

THE COURT: I don't see any pertinence to that. It is my impression that there is nothing added to that. That is normal insurance, isn't it?

MR. BERNFELD: No, your Honor, we contend --

THE COURT: In any event, I don't think it has anything to do with your case. What is next?

MR. BERNFELD: That carries through line 25 on page 246. We go next to page 250.

THE COURT: I think you better give the reference and let me read it first.

elr11 "Forti 3543

"Q Was it at Bunge's office?

"A I believe so.

"Q And Mr. DeAngelis was there at your office at the time?

"A Yes, sir, I believe so."

Going to line 14, your Honor, through line 24.

THE COURT: All right.

BY MR. BERNFELD:

"Q Do you remember any conversation that went on on the subject of the inspection at that time, or are you just surmising it from --

"A No, not specifically. I do know, and I think I have indicated before, that this was a constant thought in Bunge's mind, to make these audits and inspections more regular and at more frequent intervals.

"And at any rate, Bunge wanted to have the privilege to conduct these inspections at any time Bunge saw fit. And evidently, this was concluded in this letter agreement as part of it."

We go next to page 307, line 6.

"Q Did Bunge" --

THE COURT: I don't see that. Line 6?

MR. BERNFELD: Line 6, through 15.

elrf 5 "Forti" 3550

MR. BERNFELD: Can I read it for the one per cent, your Honor?

THE COURT: No, I think that now that I have read it if there is any problem about it, I can deal with it. Let's go to something else.

MR. BERNFELD: That passage went from 356 line 9 through 357, line 23. We go to page 359 at the bottom of the page, line 24. Referring to certain instructions given by Mr. Forti to Mr. Groeneveld and then the response at page 360 that I am interested in is the question and answer series that begins line 16 through line 25.

THE COURT: That is the same thing. The issue you are raising there is the reliability of the record. I think Mr. Fornari has indicated that those records, at least the ones you showed him, were made by this man. Where do we go from there?

MR. BERNFELD: Next page 362, line 2 through 20, and I know that even though these deal with the record, there is discussion in that that relates to when Mr. Forti saw it. For that reason I would like to read the passage. When Mr. Forti saw the records.

THE COURT: I don't think that helps you. Let's move on.

MR. BERNFELD: Your Honor, I believe that is

elrf 10 "Forti" 3555

We go now to page 429, lines 22 to 24, and then it continues at page 431; lines 8 through line 22 on page 432, your Honor.

MR. FRYER: Your Honor, I object on the ground of relevance.

MR. O'DONNELL: We had that from Mr. Fornari.

THE COURT: No, there is nothing going to be served by that. What is next?

MR. BERNFELD: The next one is page 433 lines 8 through 25.

MR. FRYER: I object on the same ground.

MR. BERNFELD: I don't believe that was established by Mr. Fornari.

THE COURT: All right, you can do that.

MR. BERNFELD:

"Q I understand from our off the record discussion, Mr. Forti, that in a couple of instances prior to April of 1963 Bunge accepted American Express warehouse receipts without tank numbers in them, without surveys as collateral for loans, where the loans were short term loans, that after April 1963 there were only one or two instances where American Express receipts were accepted without the non-fungible language and

accompanying survey, and in these instances receipts were not accepted as collateral for loans or rather were accepted as additional collateral pending clearance of checks. Does that accord with your recollection?

"A Yes, sir.

"Q I take it you would not have been willing to accept any American Express receipt without an accompanying survey and the non-fungible language after April 1963, is that right?

A That's right."

Next, page 434, line 2 through page 435, line 4.

MR. FRYER: I object on the ground of relevance.

THE COURT: That doesn't advance us at all. Let's go to the next one.

MR. BERNFELD: Your Honor, we believe that this passage and the exhibit it refers to goes to the issue of whether the type of insurance coverage that Bunge had available prior to that time was adequate, and that around this time they decided to switch over to another type of insurance coverage.

THE COURT: Go to the next passage.

MR. BERNFELD: Page 440, the question on

elrf 14 "Forti" 3559

first transaction of this type that Bunge had engaged in with Allied, was it?

"A I believe there had been similar transactions before.

"Q Will you describe the transactions referred to in paragraph 1-B?

"A Yes. That Bunge would accept or -- rather, would purchase negotiable warehouse receipts reflecting crude soybean oil and simultaneously sell an equivalent amount of oil on a futures contract with the Chicago Board of Trade. And this was done as a way, as a means of Bunge hedging itself against the possible market fluctuation and assuring full protection.

gwrf am 6a 1 "Forti" 3560

"Q How was the price at which Bunge purchased the receipts and the price at which it sold futures determined?

"A The price at which the futures were sold obviously was the market price of the day.

"Q I understand that these are called ex-pit transactions; is that right, the futures end of the transaction?

"A It could be done, yes. It could be done that way.

"Q And the buyer of the futures was Allied, was it not?

"A I don't know if that was so in every instance. It might have been in some instances.

"Q Wasn't this arranged between Bunge and Allied in advance?"

MR. BERNFELD: There is a colloquy and it picks up at line 25, your Honor.

"A Yes.

"Q And I believe we have established off the record in discussions with Mr. Fornari that the buyer of the futures was, in fact, Allied in every instance?

"A Yes.

"Q What was your understanding at this time as

gwrf 2 "Forti" 3561

to Allied's reasons for wanting to engage in transactions of this type with Bunge in registered receipts?

"A My understanding was that Allied wanted to maintain its position -- by 'position' I mean inventory -- in all. And Allied did not have the cash availabilities for it. And therefore, this was one method and one form of financing this inventory, as any other.

"By this means Allied wanted to maintain a certain availability of spot oil, and intended to obtain the finance, the funds to enable it to do so.

"Q So far as you understood at the time, did Allied's reason for wanting to engage in these transactions have anything to do with wanting to support the market price of soybean oil?"

MR. O'DONNELL: I object to that on the ground of relevance. He is talking about soybean oil.

THE COURT: The objection is overruled.

"A Well, certainly so, since Allied was long this oil, if Allied had chosen to sell the oil on the market rather than carrying the oil, this would have had an adverse effect on the market, which would have been detrimental to Allied's interests."

MR. BERNFELD: We go next, your Honor, to page 452.

charges and interest to his other creditors on the same scale that he was paying it to Bunge? When I say 'scale' here" --

THE COURT: This is an additional excerpt.

MR. BERNFELD: Mr. Brown wanted it read. I certainly had no objections to it.

MR. BROWN: I had not planned to go this far, your Honor. I really have no objection.

THE COURT: All right. Let's conclude it.

BY MR. BERNFELD:

"Q When I say'scale'here I am talking about the rate.

"A It was my assumption, yes. In one case he had come to us asking to reduce the rate of interest from 7 to 6 per cent, alleging that other parties would only charge the 6 per cent rate."

THE COURT: All right. That's enough. You can read the end of the sentence and let's move on to something else.

"A I think there is a letter to that effect.

THE COURT: Next excerpt.

MR. BERNFELD: May I call your attention in particular, your Honor, to the discussion that goes

gr5 "Forti [3576]

from line 17, particularly question 22, through line 4 on the next page which I believe is quite relevant to our contentions. I don't believe it's been brought out through any of the Bunge witnesses today.

MR. BROWN: Your Honor, we would object to this.

THE COURT: We got all that in.

If you want to have it figured out what it amounts to, you are going to have accountants here. Let's go on to the next excerpt.

MR. BERNFELD: Page 483, line 18.

"Q Did you believe his statement that he could operate profitably paying interest at the rate of 20 per cent, roughly, on $3[illegible] million worth of loans?"

MR. BROWN: We will object to that. I don't thin- there's any foundation for it and I think it's irrelevant, your Honor.

THE COURT: Yes, I think so. We know what he was paying. We know what the agreements were. It seems to me that the analysis of them has to come from somebody who can be cross-examined.

MR. BERNFELD: Turning next to line 23 on page 483:

"Q Do you recall any discussion in the fall of

gr1 "Forti

3604

THE COURT: What is next?

MR. BERNFELD: We are skipping over to page 506, line 4.

"Q Do you recall any discussion you had with Mr. DeAngelis on the subject of what he was trying to do in the market or the size of his position which took place after your meeting with Mr. Berg?

"A I don't believe I spoke with him. But if I remember correctly I think Mr. Kenner did. I think Mr. Kenner attempted to find out from DeAngelis some information concerning his position.

"This is to the best of my recollection.

"Q Did he tell you what he found out?

"A If he did, I don't remember now.

"Q Do you recall any consideration or discussion concerning the question of whether Bunge should take a short position in the futures market for its own account at about this time? That is, towards the end of the week which ended on November 15th.

"A Yes.

"Q Would you state with whom you had that discussion and what the substance ofthe discussion was?

"A Yes, there were consultations with Mr. Brasmer, who was the gentleman who we were relying on to

gr2 "Forti [3605]

give us the basic information.

"As I have explained, we felt that everything hinged on whether or not Russia would conclude these negotiations, and timing was a very important matter. Mr. Brasmer was the one who was more closely in contact with that particular situation.

"So we relied on him to give us -- to fill us in with this particular information.

"As I remember, I went to Chicago on the following Thursday night --

"Q This would be November 14th?

"A Yes, if it was Thursday.

"Q It is that Thursday we are talking about, the one just prior to the Allied bankruptcy.

"A Yes.

"I had been scheduled to go to Chicago to visit the terminal there. And I did in fact leave in the afternoon of Thursday. And as I arrived in Chicago I found a message that I had received a telephone call from New York and spoke with New York.

And at that time I think Mr. Fornari and Mr. Klein were on the telephone.

"I am not certain who was on the telephone, but they told me that their feeling was that the Russian

gr3 "Forti 3606

deal looked like it would fall through and that they felt thatin order to protect Bunge's position the overall position in the fats and oils market, it would be a good idea to hedge Bunge' s position which at that time was net long and they informed me of that position and they asked me if I concurred.

"And I answered that if they felt that the basic information relating to the definite failure of the Russian business to materialize, that I would agree to it.

"And then I believe it was the folloring morning that again I spoke with New York. And they told me that a final decision had been reached to the effect that Bunge would gradually, leisurely, in a small way, without affecting the market, place some hedges against the overall fats and oils position by selling a few hundred contracts each and every day, both on the New York Produce Exchange and the Chicago Board of Trade.

"Q Do you recall any consideration that was given by you or others at Bunge to the question of whether or not, in addition to hedging Bunge's position in cash oils at that time, Bunge would take a short position for speculative purposes?

"A That was not mentioned at the time at all,

elrf 2 "Forti" 3625

In fact, the decision that was reached then was not even to hedge the position completely; it was to hedge it partially and then just to watch the situation and see how the situation developed and how the mareket reacted.

"So I would say that within the next two or three days, or at least until Allied declared bankruptcy, Bunge was not even able to or was not to hedge its position completely by the time -- what I mean to say, by the time Allied went bankrupt, I think Bunge's position was still on the long side if my memory is correct.

"Q Did Bunge then go on the short side?

"A I think that this movement was carried through and at one particular moment Bunge was slightly on the short side of the market.

"Q When was that?

"A I don't know the date exactly. I would say it was sometime the following week.

"Q Do you recall any discussion or consideration which you gave to the question of whether Bunge would go on the short side of the market?

"A If I expressed an opinion?

"Q Was this a decision you made that you should

gr5 "Forti [3608]

take a short position, that is, a speculative short position, or was this a decision somebody else at Bunge made?"

MR. BERNFELD: Then there's colloquy and the next question:

"Q I had understood you to say that it was decided on Friday morning or at least you were informed on Friday morning" --

The reference being to November 15.

-- "that it had been decided to hedge and that the initial decision was not even to hedge the entire amount, but simply to start hedging.

"A That's right.

"Q Then Mr. Klein left over the weekend.

"A That's right.

"Q Then you stated that sometime the next week you did, in fact, take a short position which was beyond what was necesary to hedge the cash oil position you had, but was a shorter position for speculative purposes; is that right?

"A Right, yes.

"That was a continuation of the same process, because you start by putting some hedges against your long position, and then you carry through the process

gr6 "Forti 3609

until you find yourself on the short side.

"Q The question I am getting at here is when and by whom was the decision made to go beyond hedging your long position and take a position on the short side?

"A I donot believe it was any decision by any single individual. During those days we did have consultations with Mr. Brasmer primarily. And I think the decision was generally left up to him in the absence of Mr. Klein as to what to do from the standpoint of position.

"Q This is true with respect to both oils and grain?

"A Well, I would say at that particular time yes. So I cannot tell you who and if there was an individual who decided on this. I think it was arrived at by mutual consultation.

"Q When was this decision made?

"A This was going on daily or several times a day."

MR. BERNFELD: We go next to line 23 on the same page, page 511:

"Q I would take it fromyour testimony that you had discussions with Mr. Barsmer and Mr. Fornari on November 18 as to whether you should continue completely

gr7 "Forti [3610]

hedging Bunge's cash oil position and then should go short; did you not?

"A Yes.

"Q In these discussions did you give any consideration to the effect of your going short would have on the market?

"A I would like to understand your implication correctly.

Q The market was going down on Monday, the 18th.

"A Yes. If you mean to say that our action of going short would affect the market, I would say definitely no, because this position that Bunge took was such a small position compared to the overall market position that I definitely don't believe that by itself was affecting the market in any way. The market wanted to go down but it was not as a consequence of Bunge's selling."

MR. BROWN: I object to the next line of questioning here, your Honor. I think it assumes facts that aren't in evidence, it's speculative, it's argumentative with the witness and it's irrelevant.

MR. BERNFELD: May I state the question, your Honor?

elr4 "Forti [3615]

"Q Is that a fair statement of the manner in which the operation was carried through by you and Mr. Fornari, vis-a-vis Mr. Klein?

"A Yes.

"Q Who did you and Mr. Fornari report directly to, in this period, the summer of 1962, in connection with the operation of the oil department insofar as it dealt with the relationship between Bunge and Allied?

"A Mr. Klein.

"Q There was no intermediary in the New York operation? In other words, you and/or Mr. Fornari reported directly to Mr. Klein?

"A Let's put it this way: The official relationship, we were responsible to Mr. Klein.

"There might have been times wherein certain aspects of this particular operation we would discuss with with Kenner, who was entrusted by Mr. Klein with the general supervision of the administrative and legal and technical arrangements with DeAngelis, to be sure that they were proper and correct. So there might have been certain matters which we, meaning Mr. Fornari and I discussed with Mr. Kenner and not discussed with Mr. Klein directly" --

THE COURT: Is Mr. Kenner going to be called?

gr8 "Forti

THE COURT: State?

MR. BERNFELD: May I read the question?

THE COURT: There's no point in reading the question unless I'm going to allow the answer.

MR. BROWN: If you look at page 151 at line 18, I think you will see how this ends up.

(Pause)

THE COURT: I think what you better do, Mr. Bernfeld and Mr. Harris, these are facts or estimateions, and I don't see any point in putting them out unless you are going to have some facts to prove them, and you will have that opportunity. There's no basis for you just to throw out figures now in the present state of the record.

elr6 "Forti 3617

"A That is right. Any major transactions to be entertained with Allied would be discussed with Mr. Klein and he would set the policy and usually any verbal communication would be followed by a short memorandum. If it originated from us or letters from Allied, would be marked for Mr. Klein's attention.

"Q Did Mr. Klein discuss with you on a day-to-day basis the administrative details, the relationship between Bunge and Allied?

"A I would not everyday, but whenever the occasion warranted. I don't know what you mean by administrative detail. Mr. Klein did not go into small details. He would just set the general policy.

"Q For example, the quantity of sales made on a day-to-day basis?

"A No. Mr. Klein would certainly set a limit. He would say up to this limit, up to so many millions of dollars and not beyond that. He would just give us the general structure.

"Q And these would be policy guidelines that he would set up?

"A Exactly.

"Q And these policy guidelines would be pursued from an administrative and personal point of view by you

elr7 "Forti

and Mr. Fornari?

"A Yes."

MR. BERNFELD: Line 25, line 31:

"Q If there was something of an important nature, you would keep Mr. Klein posted?

"A Right."

MR. BERNFELD: Your Honor, at the end of the selection that ends at page 35, line 17, I'd just like to read that last question and answer for clarification, as we have gone back and forth.

THECOURT: Line 17?

MR. BERNFELD: Just lines 12 through 17. The question beginning, "In other words."

MR. BROWN: I have no objection.

THE COURT: I don't see how it's of any pertinence to us. They are talking about Mr. Kenner there.

MR. BERNFELD: Yes, your Honor.

Page 51, line 20:

"Q In your September 20th memorandum, reference is made to a guaranteed profit to Bunge of $1 million.

"in 1962, did you have a similar arrangement with any other person or entity that you were doing business with in the oil department at Bunge?

elr8 "Forti 3619

"A No.

"Q Prior to 1962, had you ever entered into a similar agreement with Allied or any of its affiliated companies?

"A Not to the best of my recollection."

THE COURT: Mr. Bernfeld, my copy doesn't show that was supposed to be read. Don't add anything. I am deleting, not adding.

MR. BERNFELD: I'm sorry.

MR. BROWN: Your Honor, we will object to the question that begins at line 16 on the ground of relevance.

MR. BERNFELD: I think it's of essential relevance, your Honor.

THE COURT: You may read it.

BY MR. BERNFELD:

"Q To the best of your recollection during the approximate period of 15 years that you were connected with Bunge, did the oil department at Bunge ever enter into a similar guaranteed minimum profit agreement with anyone in connection with the oil department?

"A Not to the best of my knowledge."

Turning to the next transcript, the one dated April 13, 1964.

elr10 "Forti 3621

testimony.

MR. BERNFELD: I'm not sure it's perfectly consistent, your Honor. This is a fairly detailed subject.

THE COURT: You want to read page 39 to --

MR. BERNFELD: I think it wuold be sufficient to go to page 39, line 20.

THE COURT: All right.

MR. BERNFELD: 38, line 9:

"Q Well, as a matter of fact, Mr. Forti, isn't it true that when you say that Allied payments were delayed a day or two, the usual manner of buisness between Allied and Bunge was that Allied would give checks to Bunge which everybody knew were not to be deposited right away, isn't that so?

"A In some cases.

"Q Well, as a matter of fact, Mr. Forit, can I refresh your recollection, I know you don't have the documents and as the result of your not having them we don't have them, but wasn't there a situation where in July some $5 million in checks were given to Bunge by Allied which were held until the end of August?

"A I don't remember that but there had been occasions where checks were given and were held, yes, that

elr11 "Forti 3622

would be correct.

"But I don't know the amount, I don't know the exact date. That would not be extremely unusual.

"Q Well, this was a rather, as you characterized it a delay in payment was it not?

"A Well, call it that way, I mean the checks were always dated as of the day they were issued, they were not postdated.

"Q But Bunge knew and you knew --

"A There was let's say a friendly agreement with Allied that those checks would not be put in right away.

"Q Well, did you ask why?

"A I think it was obvious, because Allied did not have all the funds available at the moment on the spot.

"Q As a matter of fact, Mr. Forti, do you recall any occasion where a substantial number of checks which had been given in July and were supposedly to be put through for deposit in August were not put through by Bunge for deposit in August but in fact were changed for additional checks of Allied, do you recall that?

"A Well, I know there had been instances in

elr12 "Forti

which checks were held back over and beyond the time at which they were supposed to be deposited."

MR. BERNFELD: The next entry skips to page 110.

MR. BROWN: Your Honor, on this one I will particularly object to its being irrelevant to any issues in this case. It involves sales during 1963, and as far as I know it doesn't involve '63 and has no relevance.

MR. BERNFELD: Your Honor, it goes to the interrelationship between Bunge and Allied, and we believe that this is a new fact that has not been even covered presently.

THE COURT: I don't see any purpose to be served, Mr. Bernfeld. We have already established that this relationship commenced sometime in 1960, '59 to '60.

MR. BERNFELD: Yes, your Honor. This particular item goes to whether or not there was a commission relationship between Bunge and --

MR. BROWN: Your Honor, I object --

THE COURT: Move on to something else.

"Q Do you know what it averaged?

"A Well, certainly it did not average on the basis of $40,000,000 a month, I can tell you that much.

"Q I am not saying that, I say do you know what it averaged per month?

"A No, but I would say it was certainly between 50 and 00 million dollars a year.

"Q 50 and 100 million dollars a year?

"A Yes.

"Q Mr. Forti, would you be surprised if I told you that the amount of money paid by Allied to Bunge between January 1, 1963 and November 19, 1963 exceeded 150 million dollars?"

THE COURT: We have those figures in evidence.

MR. BERNFELD: I will return then to the final selections which are in the next transcript, the date of which is January 29, 1964, denominated 23-A. And the first entry appears at page 6. The lines aren't numbered but I counted down. Page 6, line 7:

"Q Are you a member of any exchanges?

"A Yes, I am a member of the New York Produce Exchange.

"Q How long have you been a member of the Produce Exchange?

"A About two years I would say.

"Q Do you hold this membership individually or on behalf of Bunge Corporation?"

THE COURT: I don't think that really helps us. What difference does it make?

MR. O'DONNELL: I'm sorry, your Honor, I don't have this transcript.

THE COURT: I don't think that his membership helps us in any way. I think that Mr. Fornari testified at one point he was a member.

MR. BERNFELD: Mr. Fornari testified that Mr. Fornari was a member, I believe beginning in 1964. Mr. Forti's testimony is that he was a member during 1963.

MR. FRYER: I will stipulate that Mr. Fornari was a member of the Produce Exchange in 1963.

THE COURT: It is clear that Mr. Kelin was a member.

MR. O'DONNELL: Mr. Forti was on the Cottonseed Oil Products Committee, your Honor.

MR. BERNFELD: Mr. Fryer did stipulate to that. In addition he was also on the Animal Oils and Fats.

THE COURT: Where else are we going now?

MR. BERNFELD: The next is page 8. Lines 5

elrf 5 "Forti" [3628]

don't remember specifically. I would imagine there were more.

"Q Do you recall whether these statements were certified?

"A I recall that in most cases these statements were simply signed by Mr. DeAngelis and -- except in one case.

"Q Which case?

"A That would be the last statement we got in September, 1963. That statement was prepared by a private accountant."

MR. BERNFELD: I objectthat is sufficient on that point, your Honor.

MR. BROWN: Your Honor, I would like to go on with that for a little while please. Skipping over to page 17 -- I'm sorry, your Honor. I don't want to.

THE COURT: Thank you.

MR. BERNFELD: Next page, 18, line 6:

"Q Was there a specific reason for the production of these financial statements?

"A Well, of course we were vitally interested in knowing the status of Allied, how it was doing. We were advancing money. We wanted to be posted.

"Q Did these financial statements satisfy

elrf 8 "Forti" 3631

"A Well, we felt that -- our management felt that the credit we gave them was justified.

"Q I am not asking you that question, Mr. Forti.

"A Maybe I musunderstood it. Would you please repeat it?

"Q Was it to Bunge Corporation's advantage for Mr. DeAngelis to accomplsh his aim; namely to dominate it to such an extent, the edible oil field?

"A Well, I would say yes because Mr. DeAngelis was not a competitor of Bunge really. He was a supplier of Bunge and a customer of Bunge.

"Q If he was able to control the supply to such an extent, wouldn't that be bad for Bunge Corporation?

"A No, because he was willing to take certain risks that Bunge would not have taken."

Next entry page 25, line 12 and 14:

"Q What percentage of your supply did Allied represent?

"A I would say about 50 per cent as a guess. "

Page 27, line 18:

"Q Mr. Forti, you previously testified that Allied supplied approximately 50 per cent of the oil you exported or you sold to other countries?

elrf 9 "Forti" 3632-

"A Approximately, yes.

"Q What was the price that Allied charged you, a standard price?

"A I woud say in most cases it was lower than the price we could have had elsewhere.

"Q It was a lower price?

"A It was a lower price. In our trade the difference is not big. It might be 50 cents a ton,or 25 cents a ton. That constitutes a lower price.

"Q What would that represent to Bunge dollar-wise?

"A A profit of maybe a half a percent or a quarter percent.

"Q Again dollar-wise; what would that be?

"A 50 cents a ton or maybe $1 a ton. In other words, if we had, say 10,000 tons of business, it would probably represent a gross profit for the firm of about $10,000 or $15,000 or $20,000.

"Q How many tons of edible oil did Bunge deal in?

"A Altogether?

"Q Approximately.

"Q I would say, in the last year, seven or eight hundred thousand tons.

"Q Fats and oils?

"A Oils maybe five to six hundred thousand tons.

"Q Approximately how much of that came from

Allied?

"A About half.

"Q So that we are talking about approximately a half million dollars?

"A Right, that would be correct.

"Q If Allied had ceased functioning were there other sources of supply to handle this amount available to Bunge?

"A Yes.

"Q At a different price?

"A Probably.

"Q Higher price?"

"A Probably, yes."

MR. BERNFELD: No further questions.

MR. BROWN: I will just take that one question and answer.

"Q Since Allied's cessation because of its difficulties, has Bunge Corporation been able to go to other sources of supply to meet its demand?"

MR. BERNFELD: I object, your Honor.

THE COURT: You may read the answer.

MR. BROWN:

"A I must say the market is still in a state of complete disruption as a consequence of Allied's

bankruptcy. No one in the trade really feels -- business is at a standstill, so there has not been a very large volume of business. Also it has so happened that since the middle of November when Allied went out of business, there have been no big business at all. We had no - opportunity of participating in any business if we wanted to."

MR. HARRIS: Your Honor, before we call our next witness, may I have a moment to confer with Mr. Fryer about a stipulation.

(Pause.)

MR. HARRIS: The next withess, your Honor, is Walter Klein.

W A L T E R C. K L E I N, a witness called by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

MR. HARRIS: Your Honor, Mr. Fryer and I have worked out a stipulation on some background facts. I would just like to read the stipulation relating to Mr. Klein.

First, your Honor, it is agreed that defendant Walter Klein is currently the president of

Bunge Corporation since 1959. It is further agreed that Walter Klein first joined Bunge Corporation in 1947 and that he became a vice-president of Bunge in 1952. It is further agreed that in 1955 Mr. Klein became a director of Bunge Corporation and at that time was involved in Bunge's interior grain program.

It is further agreed that during 1963 Bunge Corporation had a demonstrating fats and oils business but that its major business in fats and oils was in exports. It is further agreed that in 1963 Walter Klein was a member of the Chicago Board of Trade, the Winnipeg Exchange and the New York Produce Exchange.

It is further agreed that since 1959 and during 1963 Walter Klein was a member of the Board of Managers of the New York Produce Exchange.

It is further agreed that during 1963 Walter Klein was on the Executive Committee of the New York Produce Exchange.

Also, at this time, your Honor, I would like to offer Plaintiff's Exhibit 200 for identification, which is Mr. Klein's membership application to the New York Produce Exchange.

MR. FRYER: No objection, your Honor.

(Plaintiff's Exhibit 200 received in evidence.)